

Policy of the General Election Commission to Prohibit the Administrator (Functionary) of Political Party as Prospective Candidate of the Regional Representatives Council Member in the 2019 Election

Tohadi*, Dian Eka Prastiwi, Reni Suryani, Frieda Fania

Universitas Pamulang, Tangerang Selatan, Indonesia

*Corresponding author email: mohhtohadi@gmail.com

ABSTRACT. This study aims to describe: 1) What is the legal basis behind policy of the General Election Commission (KPU) in prohibiting the administrators (functionaries) of political parties as prospective candidates (balloons) for DPD members in the 2019 Election, and 2) how is the form and application of policy of the KPU in prohibiting the administrators (functionaries) of political parties as prospective candidates for DPD members in the 2019 Election. The results of the study provide conclusions: first, the direction of KPU regulates the prohibition for political party administrators (functionaries) as prospective candidates for DPD members in the 2019 Election with reference to the Decision of the Constitutional Court Number 30 / PUU-XVI / 2018 of 23 July 2018. Second, the KPU is responding to the Constitutional Court Decision Number 30/PUU- XVI/2018 by regulating the prohibition for political party administrators (functionaries) as prospective candidates for DPD members in the 2019 Election through the provisions of Article 60A PKPU Number 26 of 2018 dated August 6, 2018 in essence prohibit the administrators (functionaries) of political parties as prospective candidates for DPD members.

Keywords: the 2019 Election; the Constitutional Court; the House of Regional representatives; the Supreme Court.

1. INTRODUCTION

The discourse on the prohibition for political party administrators (functionaries) to be representative candidates for The Regional Representatives Council (DPD) members in the 2019 elections became public interest. This followed the decision of the Constitutional Court No. 30/PUU-XVI/2018 July 23, 2018 and eventually finally the Supreme Court (MA) Decision No. 65 P/HUM/2018 dated October 25, 2018 which has different content each another.

By the decision of the Constitutional Court No. 30 / PUU-XVI / 2018 of 23 July 2018 a quo asserted that each citizen of Indonesia who are registered as the member of The Regional Representatives Council (DPD) is not allowed to have another position

in their political parties. This discourse on the prohibition is validated since the election in 2019.

This decision of Constitutional Court obtained reaction from party administrators who registered themselves as the representative candidates for The Regional Representatives Council (DPD). Moreover, The Regional Representatives Council (DPD) composition has high affiliation to political parties.

In the note of Indonesian Parliamentary Center (IPC) on service period of 2014-2019, there were at least 70 to 132 members of the House of Regional representatives (DPD) affiliated with political parties. Then, there were 8 members The Regional Representatives Council (DPD) at once had positions as the party's administrators. The Regional Representatives Council (DPD) members' affiliation can be shown in the table.

TABLE 1. Number of DPD Members' Affiliations in Political Parties

Number	Name of Political Party	Number of Political Party Members in DPD
1	Partai Hati Nurani Rakyat (HANURA) <i>People's Conscience Party (HANURA)</i>	28
2	Partai Golongan Karya (GOLKAR) <i>Work Group Party (GOLKAR)</i>	14
3	Partai Persatuan Pembangunan (PPP) <i>United Development Party (PPP)</i>	8

4	Partai Keadilan Sejahtera (PKS) <i>Prosperous Justice Party (PKS)</i>	6
5	Partai Amanat Nasional (PAN) <i>National Mandate Party (PAN)</i>	5
6	Partai Demokrat (Demokrat) <i>Democratic Party (Democrat)</i>	3
7	Partai Kebangkitan Bangsa (PKB) <i>National Awakening Party (PKB)</i>	3
8	Partai Demokrasi Indonesia Perjuangan (PDI-P) <i>Indonesian Democratic Party of Struggle (PDI-P)</i>	2
9	Partai Aceh <i>Aceh Party</i>	2
10	Partai Nasdem (NasDem) <i>Nasdem Party (NasDem)</i>	1
11	Partai Gerakan Indonesia Raya (Gerindra) <i>Great Indonesia Movement Party (Gerindra)</i>	1
12	Partai Damai Sejahtera (PDS) <i>Prosperous Peace Party (PDS)</i>	1
13	Partai Buruh <i>Labor Party</i>	1
14	Partai Nasional Indonesia Mahaenisme (PNI Marhaenisme) <i>The Indonesian National Mahaenism Party (PNI Marhaenisme)</i>	1
15	Partai Perjuangan Indonesia Baru (PPIB) <i>New Indonesian Party of Struggle (PPIB)</i>	1
16	Partai Idaman <i>Dream Party</i>	1
Total		78

Bad reaction was delivered by the Head of HANURA who was also as the Head of The Regional Representatives Council, Oesman Sapta Odang (OSO). In the television broadcasted on July 26th 2018, OSO insulted that the Constitutional Court was stupid. This statement got response from the Constitutional Court by the objection letter for OSO on July 31st 2018 [1].

Among legal experts, there are also different opinions regarding to the meaning of the Constitutional Court Decision. Indonesia's Law Lecturer, Jentera Bivitri Susanti argued the prohibition that applies to the balloons of DPD for the 2019-2024 term. In accordance with the consideration of the Constitutional Court Decision No. 30 / PUU-XVI / 2018, the KPU could ask the representative candidates of DPD members to submit a resignation letter before the appointment of the DCT.

Meanwhile, constitutional law expert and former Minister of State Secretary Yusril Ihza Mahendra saw that the registration period for the balloons of DPD had been officially closed on July 11, 2018. He did not agree that the definition of the registration period included the verification of representative candidates of DPD until the determination of DCT. According to him, the representative candidates had attached a

number of requirements during the registration period. Therefore, if the regulation changed, the rules that are applied are the most profitable [2].

The debate had not subsided when the prohibition for political party administrators (functionaries) to nominate for DPD members whether it will be implemented in the 2019 Election or afterwards, following the issuance of the Supreme Court Decision Number 65 P/HUM/2018 on October 25, 2018. This Supreme Court decision was a material experiment which was proposed by the representative candidates of DPD who was also the Head of the HANURA Party Oesman Sapta Odang (OSO) whose name was not included in the DCT for DPD members in the 2019 Election. This Supreme Court decision basically stated that the prohibition for political party administrators (functionaries) as the balloons for DPD members applied after the 2019 Election and was not applied to DPD candidates who had registered for the 2019 Election.

Discourse on whether the KPU should apply the prohibition on political party officials (functionaries) as the balloons for DPD members in the 2019 Election or starting for the next election. This invited former Head of the Constitutional Court (MK) Mahfud Md and former Head of the Supreme Court (MA) Bagir

Manan to come to the KPU. Mahfud Md and Bagir Manan met the KPU Head Arief Budiman and other KPU commissioners on Monday (3/12/2018) to give suggestions on legal aspects related to the registration of DPD Head Oesman Sapta Odang (OSO). [3]

This paper intended to describe what is the legal basis behind the KPU policy in prohibiting political party administrators (functionaries) as representative candidates for DPD members in the 2019 Election and how the form and implementation of KPU policies in the registration of DPD members in the 2019 Election after the Constitutional Court Decision Number 30 / PUU- XVI / 2018 of 23 July 2018 and Supreme Court Decision Number 65 P / HUM/2018 of 25 October 2018.

2. RESEARCH METHOD

This research is a sociological legal research (socio-legal research), which saw that law as an empirical social phenomenon and a descriptive study which aimed to fully describe the characteristics of a situation, personal behavior and group behavior, and to determine the frequency of a symptom. [4]

As a sociological legal research, the data source that was used is secondary data, which was the Constitutional Court Decision Number 30 / PUU-XVI / 2018, the Supreme Court Decision Number 65 P / HUM / 2018 and KPU regulations related to stages, programs, and schedules of the election 2019 or the individual nomination of the balloons of DPD members. The 2019 Election as well as the individual nominations for the DPD Member Election. Then it was deepened with primary data through interviews with the KPU.

The data were analyzed qualitatively. The qualitative research methods explained the development of social phenomena such as social tendencies to behave as they should. [5] In this study, the KPU's policy of prohibiting political party administrators (functionaries) as candidates for DPD members in the 2019 Election and the legal basis behind the policy is explained. This study is about the KPU's policy in prohibiting political party administrators (functionaries) to become the balloons for DPD members in the 2019 Election and the legal basis behind its policy.

3. RESULT AND DISCUSSION

3.1 Legal Basis Of Kpu Policy In Prohibiting Political Party Administrators As Prospective Candidates (Balloons) Of Dpd Members In The 2019 Election

At the start of the registration DPD members in the 2019 Election, the KPU did not regulate the prohibition for political party (functionaries) as the balloons of DPD members.

In the process of nominating the balloons for DPD members in the 2019 Election, the KPU had decided PKPU Number 7 of 2017 concerning Stages, Programs, and Schedule for the Implementation of the 2019 Elections dated September 4, 2017.

Based on PKPU Appendix Number 7 of 2017 concerning Stages, Programs and Schedule for the Implementation of the 2019 Election, the registration and verification of representative candidates for DPD members were started from March 26, 2018 to April 8, 2018 and ended with the Announcement of DCT on 21 September 2018 to 23 September 2018.

Then, PKPU Number 7 of 2017 dated September 4, 2017 concerning the Stages, Programs and Schedule for the Implementation of the 2019 Election changed with the issuance of PKPU Number 5 of 2018 of January 19, 2018 about Amendments to PKPU Number 7 of 2017 concerning Stages, Programs and Schedule Implementation of Election Year 2019.

The registration and verification stages of the balloons for DPD member, according to PKPU Number 5 of 2018 dated January 19, 2018, were started from March 26, 2018 to April 8, 2018 and ended with the Announcement of the DCT on September 21 2018 to September 23 2018.

Furthermore, the KPU made a second amendment to PKPU Number 7 of 2017, by publishing PKPU Number 32 of 2018 of September 19, 2018 concerning the Second Amendment to PKPU Number 7 of 2017 concerning Stages, Programs and Schedule Implementation of the 2019 Election. The existence of PKPU Number 32 Year 2018 dated September 19, 2018 did not change the registration stages for DPD members as previously stipulated in PKPU Number 7 of 2017 dated September 4, 2017 and PKPU Number 5 of 2018 dated January 19, 2018.

Head of the KPU, Arief Budiman, said that the stages of registering the balloons for DPD members are up to the determination of the DCT [6].

In addition to the stages, programs and schedules above, the KPU had also published regulations related

to the individual nomination of the balloon for DPD members. The KPU published PKPU Number 14 of 2018 dated April 10, 2018 concerning the Individual Nomination for the Balloons of the House of Regional Representatives Members.

PKPU Number 14 of 2018 dated April 10, 2018 was amended by PKPU Number 21 dated July 17, 2018 concerning Amendments to PKPU Number 14 of 2018 concerning the Individual Nomination for the representative candidates of the House of Regional Representatives Members.

On April 4 2018, there was a request for a judicial review of the phrase "other workplaces" in Article 182 letter l of Law Number 7 of 2017, received at the Registrar's Office of the Constitutional Court based on the Deed of Acceptance of Application Files Number 59 / PAN.MK / 2018 and recorded in Registration Book for Constitutional Cases on April 9, 2018 with Number 30 / PUU-XVI / 2018.

Then there was the Constitutional Court Decision Number 30/PUU-XVI/2018 on 23 July 2018. The Constitutional Court Decision No. 30 / PUU-XVI / 2018 dated 23 July 2018 states that the phrase "other workplaces" in Article 182 Letter l of Law Number 7 of 2017 concerning the General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Addition to the State Gazette of the Republic of Indonesia Number 6109) contradicts the UUD 1945 (the 1945 Constitution) and did not have legally binding force conditionally as long as it is not interpreted to include political party administrators (functionaries).

Consideration and Decision of the Constitutional Court Number 30/PUU-XVI/2018

The decision of the Constitutional Court Number 30/PUU-XVI/2018 dated July 23, 2018 was about the constitutional review of the phrase "other workplaces" in Article 182 letter l Law Number 7 of 2017 concerning General Elections (also called as the Election Law).

The provisions of Article 182 of the Election Law stated:

Article 182

Individuals as referred to in Article of 181 may become Election Participants after completing the requirements:

- a. Indonesian citizens who are 21 (twenty-one years old) or older;*
- b. Fear to the One God;*
- c. living in the territory of the Negara Kesatuan Republik Indonesia (the Unitary State of the Republic of Indonesia);*

- d. may speak, read, and/or write in Indonesian language ;*
- e. the lowest educated after high school, vocational high school, or other equivalent schools;;*
- f. loyal to Pancasila, Undang-Undang Dasar Negara Republik Indonesia (the Constitution of the Republic of Indonesia), Negara Kesatuan Republik Indonesia (Indonesia (the Unitary State of the Republic of Indonesia), dan Bhinneka Tunggal Ika;*
- g. never be sentenced to prison based on a court ruling that has gained permanent legal power for committing a crime threatened with a prison sentence of 5 (five) years or more, unless it openly and honestly presents to the public that the former inmate is concerned;;*
- h. be physically and spiritually healthy, and free from narcotic abuse;*
- i. registered as a Voter;*
- j. willing to work full-time;*
- k. resign as kepala daerah (mayor), wakil kepala daerah (vice mayor), Kepala Desa (village head) and perangkat desa (village apparatus), Badan Permusyawaratan Desa (Village Consultative Body), aparatur sipil negara (civil servants), member of the Indonesian National Army, member of the National Police of the Republic of Indonesia, directors, commissioners, supervisory boards and employees of state-owned enterprises and/or local business entities and/or village-owned enterprises, or other entities whose budgets are sourced from state finances, which are stated by irrevocable resignation letter;*
- l. be willing not to practice as a public accountant, advocate, notary, land deed-making officer, and/or not to perform the work of the provider of goods and services related to the state finances as well as other workplaces that may pose a conflict of interest with duties, authorities, and rights as a DPD member in accordance with the provisions of the legislation;*
- m. be willing not to concurrently serve as other state officials, directors, commissioners, supervisory boards and employees of state-owned enterprises*

and/or local business entities and other entities whose budgets are sourced from state finances;

- n. nominate only for 1 (one) representative institution;
- o. nominate only for 1 (one) constituency; and
- p. get minimal support from voters in the relevant constituency.

Constitutional Court (Mahkamah Konstitusi) initiated its consideration by citing the consideration of the previous decision, that was the Decision of the Constitutional Court No. 10/PUU-VI/2008.

In the Decision of the Constitutional Court Number 10/PUU-VI/2008 in its legal considerations (page 204) among others states:

The amendment of the UUD 1945 gave birth to a new institution in the strict structure of Indonesia, which was DPD. DPD with its presence of representative system in Indonesia, DPR is supported and strengthened by DPD. DPR is supported and strengthened by DPD. DPR is a representative institution based on the aspirations and political understanding of the people as the holder of sovereignty, while DPD is a representative institution of regional aspirational diversity distribution. The existence of DPD institutions is an effort to accommodate the principles of regional representation [7].

Furthermore the Decision Constitutional Court Number 10/PUU-VI/2008 affirmed the nature of the existence of DPD in the constitutional design of the UUD 1945:

Thus, it can be concluded that the constitutional design of DPD as an organ of the constitution is:

- 1) *DPD is a territorial representation that brings and fights for regional aspirations and interests within the framework of national interests, as a balance on the basis of the principle of "checks and balances" against the DPR which is a political representation of the aspirations and political interests of political parties within the framework of the national interest;*
- 2) *The existence of DPD dan DPR in the Indonesian state system in which all members become MPR members does not mean that the Indonesian representative system adheres to the representative system, but rather as an overview of the typical representative system of Indonesia;*
- 3) *Although DPD constitutional authority is limited, but of all its authority in the areas of*

legislation, budget, supervision, and consideration as stipulated in Article 22D UUD 1945, all of them are related and oriented to regional interests that must be fought nationally based on the postulating balance between national interests and regional interests;

- 4) *That as a regional representation of each province, DPD members are elected through elections from each province with the same number, based on individual candidacies, not through parties, as election participants[8].*

According to the Mahkamah, based on the Decision of the Constitutional Court Number 10/PUU-VI/2008, *the original intent of DPD formation as well as the consideration of the Mahkamah in the above ruling has a strong rational-factual and conceptual basis.*

First, the original intent of the establishment of DPD or the Court Decision above cannot be judged to deny the ideal functions of political parties, especially in this case the function of communication and political aggregation. Because, in countries whose democracy lives have matured like the United States, political parties cannot in absolute terms be considered to have represented the aspirations of all people. In fact, there are independent presidential candidates in the United States. This is in line with the discourse about deliberative democracy that began to develop since the late 20th century, in which public involvement in political decision-making was no longer just the business of an elite group represented by political parties [9].

Second, the requirement that DPD members must not be administrators or come from political party administrators to prevent political distortions in the form of *the birth of double representation* of political parties in decision-making, more important political decisions such as changes to the Undang-Undang Dasar (constitution). According to the Mahkamah, in Article 2 paragraph (1) of the UUD 1945 states the MPR consists of members of DPR and DPD. On the other hand, Article 3 paragraph (1) of the UUD 1945 states the MPR has the authority to amend and establish the Undang-Undang Dasar (constitution). If DPD members are possible from the member of political parties, according to the Mahkamah, then there will be a double representation in MPR membership where political parties already represented in the membership of the DPR are also represented in DPD membership [10].

Third, according to the Mahkamah, in accordance with the principle of representation by election, DPD

reflects the existence of groups in society represented by people who are DPD members [11].

In the next Mahkamah decision, that is the Decision of Constitutional Court Number 92/PUU-X/2012, the Mahkamah in its legal considerations emphasized DPD membership as a territorial representation whose filling of office does not originate from a political party as well as its differences with members of the House of Representatives originating from political parties [12].

The establishment of Mahkamah such above is also coherent with the establishment of the Mahkamah with respect to the authority of legislation owned by DPD as stated in the decision of the Constitutional Court Number 79/PUU-XII/2014 which essentially affirms that DPD must be maximally involved in the process of establishing laws relating to regional autonomy, central and regional relations, establishment and expansion and merging regions, management of other economic resources, as well as the financial balance of central and regional [13].

According to the Mahkamah, Article 182 of the Election Law governing the requirement of individuals to become candidates for DPD members does not explicitly mention the prohibition for political party members to run as DPD members. However, according to him, Mahkamah is obliged to guarantee the realization of the spirit contained in Article 22D UUD 1945 so that the idea that DPD is a regional representation is completely realized and not distorted in the practice of state life due to the absence of restrictions with respect to the requirements of nomination especially related to the member of political parties [14].

In Article 182 letter (1) Election Law there is no explanation for the phrase "other workplaces" that may cause a conflict of interest with the duties, authorities, and rights as a DPD member in accordance with the laws and regulations". Thus, according to the Mahkamah, there is a legal uncertainty as to whether an individual Indonesian citizen who is also the member of a political party can or may be a balloons for DPD member, thus contrary to Article 28D paragraph (1) UUD 1945 [15].

In the next consideration, Mahkamah establishment if interpreted, political party administrators can or may be a representative candidate for DPD member, it will be a contrary to the fact that DPD as a form of regional representation and at the same time potential birth of a double representation because, if the representative candidate of DPD members who come from the member of the political party is elected, then the political party from

which the DPD member comes from will factually have a representative both in the DPR and in DPD even when registering as an individual. This is contrary to the spirit of Article 22D UUD 1945. Conversely, if construed as unconscionable or unacceptable, such prohibition is not explicitly mentioned in the Election Law, specifically Article 182 letter 1. Therefore, the Mahkamah affirms that individual Indonesian citizens running for DPD should not be concurrent as the member of a political party [16].¹⁶

Mahkamah also emphasized that what is meant by "political party administrators" in this decision is administrators from the central level to the lowest level in accordance with the organizational structure of the political party concerned [17].

In the 2019 Election, because the registration process for DPD candidates has begun, according to the Mahkamah, in the event that there will be prospective DPD members who happen to be the member of political parties affected by this decision. Mahkamah stated that the KPU may give the relevant person the opportunity to remain as a candidate for DPD as long as it has stated the resignation of the member of the political party as evidenced by a written statement of legal value regarding the resignation in question. Thus for the next, DPD members since the 2019 Elections and subsequent elections who are the member of political parties are opposed to the UUD 1945 [18].

Based on the considerations as above, Mahkamah gave decision that the phrase "other workplaces" in Article 182 Letter 1 of Law Number 7 of 2017 concerning the General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Addition to the State Gazette of the Republic of Indonesia Number 6109) contradicts the UUD 1945 (the 1945 Constitution) and did not have legally binding force conditionally as long as it is not interpreted to include political party administrators (functionaries).

3.2 Form And Application Of Policy Of The General Election Commission To Prohibit The Administrator (Functionary) Of Political Party As Prospective Candidate Of Regional Representative Councils Member In The 2019 Election

As a follow-up to the Constitutional Court Decision No. 30/ PUU-XVI/2018 dated July 23, 2018, the KPU issued PKPU (General Election Commission Regulations) Number 26 of 2018 dated August 6, 2018 concerning the Second Amendment to PKPU Number 14 of 2018 concerning Individual

Nomination for Election Contestants for the House of Regional Representative Members.

Article 60A PKPU Number 26 of 2018 dated August 6, 2018 requires DPD (The Regional Representatives Council) member candidates to resign from their position as administrators (functionaries) of political parties before the registration period for DPD member candidates.

As for the prospective candidates for DPD members who have met the requirements of the candidates or have not met the requirements of the candidates and are in the process of revising the requirements of the candidates or are undergoing verification of the requirements of the candidates, they can remain as candidates for the prospective candidates for DPD members by obliging to submit:

- a. letter of resignation as administrator (functionary) of a political party that has legal value and cannot be withdrawn, signed by the prospective candidate for DPD member concerned and affixed with sufficient duty stamp; and
- b. the decision of political party leader in accordance with their authority based on the statutes and by laws of the political party concerning the dismissal of the said prospective candidate for DPD member as a political party official.

Article 60A PKPU Number 26 of 2018 dated August 6, 2018 states:

Pasal 60A

- (1) *The fulfillment of the requirements for individual Election contestants to become prospective candidates for DPD members as referred to in Article 60 paragraph (1) letter p, includes those not in their positions as administrators of political parties at the central level, administrators of political parties at the provincial level and administrators of political parties at the district / regional city level.*
- (2) *Prospective candidate for DPD member as referred to in paragraph (1) shall resign from his position as a political party administrator (functionary) before the registration period for the DPD member candidate.*
- (3) *Prospective candidate for DPD member who has met the candidate's requirements or has not met the candidate's requirements and is in the process of revising the candidate's requirements or is currently verifying the candidate's requirements, may remain a prospective candidate for DPD*

member by obliging to submit:

- a. *letter of resignation as administrator (functional) of a political party that has legal value and cannot be withdrawn, signed by the prospective candidate for DPD member concerned and affixed with sufficient duty stamp; and*
- b. *the decision of political party leader in accordance with their authority based on statutes and bylaws of the political party concerning the dismissal of the said prospective candidate for DPD member as a political party official.*

- (4) *The resignation letter as referred to in paragraph (3) letter a shall be submitted to the KPU through the Provincial KPU / KIP Aceh no later than 1 (one) day prior to the determination of the DCS (provisional candidate list) for DPD Members.*
- (5) *The decision of the leadership of the political party as referred to in paragraph (3) letter b, shall be submitted to the KPU through the Aceh Provincial KPU / KIP no later than 1 (one) day before the determination of the DCT (permanent candidate list) for DPD Members.*
- (6) *In the event that the resignation statement letter and the decision of political party leader are not submitted during the period referred to in paragraph (4) and paragraph (5), the prospective candidates for DPD member is declared not meeting the requirements and his name is not included in the DCS (provisional candidate list) for DPD member or DCT (permanent candidate list) for DPD member.*

PKPU Number 26 of 2018 dated August 6, 2018 concerning the Second Amendment to PKPU Number 14 of 2018 concerning Individual Nomination for Election Contestants for the House of Regional Representative Members by one of the candidates for DPD members was judicial review to the MA (Supreme Court).

Through the Supreme Court Decision Number 65 P/HUM/2018 dated October 25, 2018, the Court in essence, first, states the provisions of Article 60A of KPU Regulation Number 26 of 2018 concerning the Second Amendment to KPU Regulation Number 14

of 2018 concerning Individual Nomination for Election Contestants for the House of Regional Representative Members, contrary to higher laws and regulations, they are Article 5 letter d and Article 6 paragraph (1) letter i of Law Number 12 of 2011 concerning the Formation of Laws and Regulations; and secondly, states that the provisions of Article 60A of KPU Regulation Number 26 of 2018 concerning Second Amendment to KPU Regulation Number 14 of 2018 concerning Individual Nomination for Election Contestants for the House of Regional Representative Members, still have binding legal force and are generally applicable as long as they are not retroactive to Election Contestants of the House of Regional Representatives Members of 2019 who have participated in the Stages, Programs and Schedule for the Implementation of the 2019 General Elections based on KPU Regulation Number 7 of 2017.

After the Supreme Court Decision Number 65 P / HUM / 2018 dated 25 October 2018, the KPU continued with its policy to prohibit political party administrators (functionaries) from becoming prospective candidates for DPD members. KPU did not follow up legally on the issuance of the Supreme Court Decision Number 65 P/HUM/2018.

As stated by the Head of the KPU, Arief Budiman. The KPU did not follow up on the Supreme Court Decision Number 65 P/HUM/2018 because according to the KPU, there is a prohibition on political party administrators (functionaries) as candidates for DPD members as regulated in Article 60A of KPU Regulation Number 26 of 2018 is not retroactive. Apart from that, the KPU still refers to the Constitutional Court Decision No. 30 / PUU- XVI / 2018 dated 23 July 2018. "The provisions of Article 60A of KPU Regulation Number 26 of 2018 include the provisions decided by the Constitutional Court," said the Head of the KPU Arief Budiman. [19]

In the view of the researcher's law, the KPU's attitude and steps to follow up on the Constitutional Court Decision No. 30 / PUU-XVI / 2018 dated July 23, 2018 by issuing Article 60A PKPU Number 26 of 2018 dated August 6, 2018 is legally correct. This is because in addition to the KPU having the attribution authority to make regulations as the implementation of the law, also because the material in Article 60A PKPU Number 26 of 2018 dated August 6 2018 is in line with the Constitutional Court Decision No. 30 / PUU-XVI / 2018 dated July 23, 2018.

On the other hand, the KPU's attitude and steps that did not follow up on the Supreme Court Decision Number 65 P/HUM/2018 dated October 25, 2018 were also not against the law. Although the Court has decided in essence, *first*, to state the provisions of

Article 60A of KPU Regulation Number 26 of 2018 concerning the Second Amendment to KPU Regulation Number 14 of 2018 concerning Individual Nomination for Election Contestants for the House of Regional Representative Members, contradicting higher laws and regulations, namely Article 5 letter d and Article 6 paragraph (1) letter i Law Number 12 Year 2011 concerning the Formation Laws and Regulations; and *secondly*, states that the provisions of Article 60A of KPU Regulation Number 26 of 2018 concerning Second Amendment to KPU Regulation Number 14 of 2018 concerning Individual Nomination for Election Contestants for the House of Regional Representative Members, still have binding legal force and are generally applicable as long as they are not retroactive to Election Contestants of the House Regional Representatives Members of 2019 who have participated in the Stages, Programs and Schedule for the Implementation of the 2019 General Elections based on KPU Regulation Number 7 of 2017.

This is because the Supreme Court Decision Number 65 P/HUM/2018 was passed on October 25, 2018 where the nomination of DPD members was completed along with the determination of the DCT (Permanent Candidate List) which took place from September 21, 2018 to September 23, 2018.

The nomination of DPD members according to PKPU Number 7 of 2017 which has been amended by PKPU Number 5 of 2018 and most recently amended by PKPU Number 32 of 2018 consists of registration and verification stages of DPD member candidates starting from March 26, 2018 to April 8, 2018 and ending with the Announcement of the Permanent List Candidate (DCT) which takes place from September 21, 2018 to September 23, 2018.

4. CONCLUSION

Based on the explanation above, it can be concluded that, first, the KPU based on the Constitutional Court Decision Number 30/PUU-XVI/2018 as a legal basis in prohibiting the administrators (functionaries) of political parties as prospective candidates for DPD members in the 2019 Election.

Second, the KPU issued the PKPU Number 26 of 2018 dated August 6, 2018 concerning the Second Amendment to PKPU Number 14 of 2018 concerning Individual Nomination for Election Contestants for the House of Regional Representative Members. The provisions of Article 60A PKPU Number 26 of 2018 require that prospective candidates for DPD members are not in their position as administrators (functionaries) of central political parties,

administrators of political parties at the provincial level and administrators of political parties at the district / city level. The provisions of Article 60A PKPU Number 26 of 2018 was declared contrary to higher laws and regulations by the Supreme Court (MA) Decision No. 65 P / HUM / 2018 of October 25, 2018, and could not be applied retroactively in the 2019 Election.

Therefore, the KPU do not take policies related to the nomination of DPD members based on the Supreme Court Decision Number 65 P/HUM/2018

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