

## **Replacement Candidates of Elected Legislators in Organizing Elections Based on Democratic Principles**

**Muhammad Iqbal Maulana Haedar<sup>1</sup>**

### **Abstract**

*The research method used is Normative Juridical with a form of data collection by observation and documentation. This research aims to be able to know and analyze how the application of democratic principles and legal implications in the implementation of replacement of elected legislative candidates. The results of the study showed that there are differences in interpretation of the authority in terms of replacement of prospective legislative members elected. Political parties consider themselves to have absolute authority, while based on its rules the KPU should have that authority. Regarding the legal implications of the candidates of elected legislators who are dismissed by his party of course make the elected candidates in question are not appointed as members of the legislature and also give rise to biased legal certainty. Whereas in the legal process has been found the results of a final and binding ruling from the Makassar State Administrative Court.*

**Keywords:** *Prospective Members of the Legislature, Elections, Democracy*

### **1. Introduction**

As one form of the realization of people's sovereignty in accordance with the principles of democracy is by the existence of an election system. Pemilu sendiri is one of the processes to fight for political interests in the form of a selection process against the birth of representatives of the people and leaders in the framework of the realization of democracy, because elections are a series of political activities to accommodate the interests of the people, which are then formulated in various forms of policy. Elections are a means of democracy to form a system of state power that has the sovereignty of the people and representative deliberations outlined by the Constitution of the Republic of Indonesia 1945.

Through amendments to the Constitution of the Republic of Indonesia 1945 with the addition of Article 6A and Article 22E, the electoral system previously elected by the house of representatives has now been changed to direct elections, both for legislative elections and for presidential and vice presidential elections. Thus, it is clear that the State of Indonesia adheres to the principles of democracy.

### **Author's Information:**

<sup>1</sup> Faculty of Law, Hasanuddin University, Indonesia

Email:

[\(muhiqbalmh@gmail.com\)](mailto:muhiqbalmh@gmail.com)

### **Article's Information:**

DOI:

<https://doi.org/10.35326/volkgeist.v5i2.1108>

Political participation is a form of the realization of a demoralized state. Countries without political participation from society tend to be authoritarian and centralistic. Political experience during the New Order shows the arbitrariness of the takers political decisions in every policy formulation and program planning (Anantya Prawira & Diamantina, 2019)

The meaning of democracy itself as the basis of public and state life contains the understanding that it is the people who provide provisions in matters concerning their lives, including in assessing the policies of the State, because the policies of the State will determine the lives of the people. Thus the State that adheres to the democratic system is a State organized based on the will and will of the people. From an organizational point of view, democracy means the organization of the State carried out by the people themselves or by the consent of the people because of sovereignty in the hands of the people (Syafie, 2002).

Related to the electoral process, our country Indonesia has just conducted a large people's party that is elections in 2019. The people at that time were considered to have made a great contribution to the State by following the presidential and legislative election process. Generally, when entering the election period (elections) the eyes of the public are only focused on the Presidential election that is considered important, but what we must underline is that in addition to the presidential election process we as Indonesians simultaneously participate in legislative elections. As a society we should not believe that presidential elections are more important than legislative elections. Legislative elections are one of the important activities that must be followed by the people because it concerns the appointment of the House of Representatives in the future. Thus, the people of Indonesia are expected to contribute by voting in accordance with conscience and choosing competent candidates.

But it should be noted that aside from the involvement of the people there are also political parties that have a large role. In practice it all goes back to the political parties again. Because a political party in its right has the authority to dismiss its legislative candidates who have the most votes. It is not impossible that there is a goal that political parties want to achieve by appointing the candidates they want to sit in the dpr or dprd seats.

One example of the case is as summarized from the data Of Perludem (Association for Elections and Democracy) which is an organisasi association that discusses elections and democracy that mentions that in the elections caleg in 2019 there are several cases in the 2019 legislative elections that allegedly violate the provisions of the constitution. This is what Perludem describes because of the existence of political parties that make replacements for elected candidates without any clear reason (Perludem, 2019).

Seeing the condition that it is clear that the actions taken by this political party are not in line with the Constitution of the Republic of Indonesia 1945 where mentioned in Article 28D paragraph 3: "Every citizen deserves equal opportunities in government."

And also related to Article 19 of the Constitution of the Republic of Indonesia 1945 which says the house of representatives is elected through elections which means the determination of elected candidates is not determined by court decisions or political party decisions. With the attitude of dismissal that is willingly carried out by political parties, it is not unlikely that in the future there will be many similar cases where the suffrage of the people and the purity of the people's voice are not even respected. By

looking at the actions of political parties that are free to fire their cadres for no apparent reason and no clarification to defend themselves, it is certain to harm the right and justice and democracy for legislative candidates elected through the implementation of the election.

In fact, the occurrence of replacement because the result of the chosen candidate has died or the chosen candidate is entangled in the case so that the candidate is subject to sanctions confinement, the author feels that it is very relevant if there is a replacement, but in the case of cadres who carried out unilateral dismissal by the parliament has actually harmed the principle of democracy and harmed the constitutional right for candidates who are purely elected by the popular vote. The arbitrary act of dismissing the elected officials is an act that is considered to hurt the sense of justice and betray the votes of the people. Therefore it should be in terms of elections and the determination of elected candidates must be based on the most votes from the people. The point is to restore sovereignty remains in the people and maintain the purity of the vote of the electorate in this case the people so that the chosen candidates still keep the democratic mandate of the people.

## **2. Methodology**

The type of research used in this study, namely empirical normative research. Empirical normative legal research is legal research on the application of normative legal provisions (codification, statutes or contracts) in action on any particular legal event that occurs in the community (Abdulkadir, 2004).

Thus, this study examines various related legal rules such as the 1945 NRI Constitution, Law No. 7 of (NKRI, 2017) on Elections, Law No. 2 of (NKRI, 2008) concerning Political Parties and Law No. 2 of 2011 concerning Amendments to Law No. 2 of 2008 concerning Political Parties and literature containing theoretical concepts which are then conducted as well as direct research into the field to see directly the application of legislation or rule of law related to this research, as well as conduct interviews of respondents who are considered to be able to provide information related to this research and then related to the problem objects in this study.

## **3. Result and Discussion**

### **3.1 Mechanism for Replacing Candidates for Elected Legislative Members in Elections**

#### **a. Terms of Replacement of Selected Candidates**

Regarding the replacement of an elected candidate, of course, there is not necessarily a replacement. The existence of *demokrasi politik* that continues to develop in political institutions in Indonesia is a very reasonable process that has always emerged in the reform era. Similarly, the occurrence of a replacement that will cause legal consequences of course there is a mechanism that will regulate it in order to realize a legal certainty in its implementation.

Associated with the replacement of the chosen candidate is actually the mechanism of replacement is already regulated in the legislation. The replacement of elected candidates from both the DPR and DPRD will go through a long systematic process, especially there are also some conditions that must be met. Regarding the

requirements of the replacement of candidates for elected legislature refers to Article 426 of Law No. 7 of (NKRI, 2017) on Elections states that:

The replacement of elected candidates of members of the DPR, DPD, provincial DPRD, and dprd district / city is carried out if the elected candidates are concerned:

- 1) Deceased;
- 2) Resign;
- 3) No longer eligible to be a member of the DPR, DPD provincial DPRD, or dprd district / city; or
- 4) Proven to commit electoral crimes in the form of political money or falsification of documents based on court rulings that have obtained a permanent legal force.

By looking at these conditions, there are four conditions that allow the replacement of elected candidates, be it members of the House of Representatives, provincial parliaments, and district / city parliaments. First, if caleg dies. Second, if elected officials resign. Then, if the caleg is not eligible, and or if the caleg is proven to have committed a criminal offence so that the caleg is dismissed by the party.

Furthermore, the description of the implementation of the replacement of the next elected candidate is contained in KPU Regulation No. 5 of (KPU, 2019b) concerning the Determination of Selected Candidates, Determination of Seat Acquisition, and Determination of Candidates Elected in the General Election. In this regulation of PKPU terms on the replacement of selected candidates contained in Article 32 paragraph 1. In line with the requirements of Law No. 7 of (NKRI, 2017) on Elections, but there is an additional requirement in it that says the replacement of elected candidates can be done if proven to be a violation of the election campaign based on a court ruling and the force of law remains. Regarding the flow of replacement itself, the author gets information from the results of the interview to Asram Jaya who is the Commissioner of KPU Of South Sulawesi Province that if there is a case of replacement of elected candidate. If you have clarified then the next stage goes to the plenary meeting. From the plenary meeting so that later the KPU will issue a decision on whether the request from political parties who want to make a replacement for the chosen candidate can be granted or not accepted.

### **b. Replacement Authority of Elected Candidates**

Juridically the sense of authority is the ability given by the legislation to cause legal consequences. Seeing the focus of the theory of authority is of course related to the source of government authority in conducting legal acts, either in relation to public law or in relation to private law (Hasrul & Pradana, 2017). Juridically the sense of authority is the ability given by the laws and regulations to cause legal consequences. So authority is the scope of public legal action as for the scope of government authority not only includes the authority to make government decisions (*bestuur*) (Indroharto, 1994), but includes authority in the framework of the implementation of tasks, and gives authority and distribution of authority mainly stipulated in the legislation.

In relation to the authority of the replacement of elected candidates, in practice because it is a new phenomenon in the laws of our state, there is a slight inequality in the law when talking about authority in the case of the replacement of elected candidates. Slightly different from the practice of inter-time change or commonly known as PAW where political parties have full authority over the right to recall to their party cadres, the mechanism of replacing elected candidates is practically causing

a scramble for authority in terms of replacement. Explicitly it has been mentioned in the legislation on its authority but in the terms of the replacement mechanism there are still some articles that produce loopholes so that indirectly the intent and content of the regulation results in disharmony of the regulation (Farida, 2013).

The author refers to a case in 2019 as summarized from one of the media that stated the existence of a former elected legislator candidate from one of the political parties who was fired by his party one day before the inauguration of members of the DPRD. Based on the reason the political party that fired him that the party only followed the results of the decision of the South Jakarta District Court (Farisa, 2019).

The decision of the South Jakarta District Court granted that some cadres who failed to be elected from the Gerindra Party in each of its constituencies were entitled to be appointed as elected legislators. A little surprising because of the request from the plaintiff that is, the failed legislative candidate considering that the party still has absolute authority to determine who is entitled to be a member of the legislature.

This is evident when we see the decision of the South Jakarta District Court No. 520/Pdt.Sus.Parpol/2019/PNJKT. The main part of the case says that the absolute right of the Gerindra Party is to determine which legislative candidates deserve to be elected legislators, this is because the most votes come from the party only. Because of this view, the Political Party assumes that based on the decision of the South Jakarta District Court indirectly the Political Party has absolute authority to determine who its cadres are entitled to be legislative. Feeling that it has absolute authority, then political parties take administrative action by imposing a dismissal on its cadres.

Actually for the regulation of the authority that carries out the replacement of elected candidates is already contained in the legislation. Law No. 7 of 2017 on Elections has clearly stipulated that to whom the authority to replace these elected candidates is given. Mentioned in Article 426 paragraphs (3) and (5) of Law Number 7 of 2017 concerning Elections states that (NKRI, 2017):

Verse (3)

"Candidates elected members of the DPR, provincial DPRD, and DPRD district / city as referred to in paragraph (1) replaced by KPU, KPU Province, and KPU Kabupaten / Kota with candidates from the list of candidates remain political parties participants of the same election in the constituency based on the acquisition of the next most candidates."

Verse (5)

"KPU, KPU Provinsi, or KPU Kabupaten Kota stipulates candidates for members of the DPR, DPD, provincial DPRD, and DPRD districts/cities as candidates for elected successors as referred to in paragraph (3) by decree of the KPU, KPU Province, or KPU Kabupaten/Kota no later than 14 (fourteen) days after the candidate is elected as referred to in paragraph (1)."

Based on the description of Article 426 paragraph (3) and (5) of Law Number 7 of 2017 (NKRI, 2017) on Elections we can know that the elected candidates be it members of the DPR, Provincial DPRD, and DPRD Kabupaten /Kota can be replaced by KPU, both in the center and the region with the condition that the replacement elected candidates come from the list of permanent candidates of electoral political parties that have the same electoral districts as the elected candidates who will be replaced and elected based on the next most votes. In the event of a replacement candidate elected no later than 14 (fourteen) days after it is known that the chosen candidate is not able to.

Based on the previous description, so then from the explanation of Article 426 paragraphs (3) and (5) should be clear to whom the authority to replace the chosen candidate is given. Slightly different from the implementation where in the case of the 2019 elections yesterday indirectly political parties have a very dominant role towards the replacement of this elected candidate. As mentioned by the author of the previous paragraph that there is a discrepancy between several articles in the rules. It is said that because Article 426 paragraphs 3 and 5 stipulate that the authority to replace elected candidates is in the KPU but in the same article in paragraph 1 letter c where the requirement states that the replacement of elected candidates will be done if it no longer meets the requirements to become a member of the DPR, DPRD and DPD.

Further description of what are the indicators of the intention of not meeting the requirements to become a member of the DPR, DPRD, and DPD is stipulated in Article 32 paragraph (2) of KPU Regulation number 5 (KPU, 2019b) which states that :

Candidates who no longer qualify as referred to in paragraph (1) letter c, include:

- 1) Candidates who are proven to still be governors, deputy governors, regents, deputy regents, mayors or deputy mayors, village heads or village devices, state civil servants, members of the Indonesian National Army, members of the State Police of the Republic of Indonesia, directors, commissioners, supervisory boards and employees at state-owned enterprises, and/or regionally owned enterprises, or other entities whose budgets are sourced from state finances;
- 2) Candidates who are convicted, except convicted who do not serve a sentence in prison;
- 3) The candidate is dismissed or resigned from the Political Party that submitted the candidate in question; and/or
- 4) Candidates are still members of the DPRD from political parties that are different from the Political Parties that submit candidates concerned.

With the result of the explanation of "does not meet therequirements" in question, we can see in letter c of the article above that one of the elements behind the replacement of elected candidates because of the termination of membership of political parties. Whereas if referring based on the previous source of authority that the authority derived from the government is derived from the legislation. Authority derived from the next legislation can be obtained in three ways, namely, Attribution, Delegation, and Mandate.

H.D. Van Wijk or Williem Konijnenbelt provides the definition of the three ways of obtaining an authority, namely as follows (Ridwan, 2006):

- a) Attribution, is the authority of the government given directly by the Law to the one who runs the Government.
- b) Delegation, is the handover of authority to the Government derived from government organs to other government organs.
- c) Mandate, is the granting of authority in which the organ of government allows its authority to be held or carried out by another organ in its name.

With the authority clearly stated in Article 426 paragraphs (3) and (5) of Law Number 7 of 2017 on Elections, it is clear that the position of the KPU as an election organizer has authority based on legislation. This is reinforced from the definition of

H.D. Van Wijk quoted from Ridwan HR. explain that the authority given directly by the Law to those who run the government is referred to as Attribution (Ridwan, 2006).

Any use of authority must have a legal basis in positive law to prevent arbitrary acts from occur. The use of governmental authority is always within the limits set at least by positive laws. In relation to the concept of state law, the use of such Authority is limited or always subject to written or unwritten laws (Indroharto, 2002).

This is reinforced by the opinion of Philipus M. Hadjon quoted from a journal that every government action is required to be based on legitimate authority. The authority is obtained through three sources, namely attribution, delegation, and mandate. Attribution authority is usually outlined through the division of state power by the constitution, while the authority of delegates and mandates is the authority derived from the delegation (Hadi & Michael, 2017).

All authority has been regulated in the legislation both against state institutions. The state institutions work in accordance with the functions and authorities given by the 1945 NRI Constitution and other laws and regulations in the system of separation of power and the principle of check and balances. Sharing power but not intervening with each other's functions and authorities. Especially for KPU which is an independent institution, it should still show its independence because its authority has been regulated by legislation (Aspan, 2012).

### **3.2 Legal Implications for Elected Legislative Candidates Who Were Dismissed by Parliament Before Inauguration**

#### **a. Decision on Replacement of Selected Candidates**

Taking the case to the legislative candidate of the South Sulawesi Provincial Parliament, Misriani Ilyas, the background of the replacement of this elected candidate is due to the replacement of candidates carried out by the KPU of South Sulawesi Province by responding to recommendations from the KPU of the Republic of Indonesia. Based on the sit-down of the main case of complaints resulting from the decision of the DKPP of the Republic of Indonesia which in this case Misriani Ilyas as the complainant found the fact that the Complainant failed to be appointed as an elected legislative candidate from the Gerindra Party in terms of the election of the Dprd of South Sulawesi Province as a result of the actions of Teradu which is contested in this case is a party of the KPU.

In addition to the replacement action taken by the KPU, the author has previously obtained facts derived from the decision of the DKPP of the Republic of Indonesia that the origin of this replacement is due on June 26, 2019 there is a lawsuit numbered 520 / Pdt.sus.Parpol / 2019 / PN / Jkt.Sel in the South Jakarta District Court filed by a number of Gerindra Party Caleg who feel objections because they do not get a seat in the legislature. From the verdict so that the Gerindra Party on September 17, 2019, sent a letter on the postponement of the inauguration of prospective members of the South Sulawesi Provincial Parliament, namely Misriani Ilyas. The dismissal of Misriani Ilyas from Gerindra party membership is an administrative step taken by Gerindra party as a form of implementation of the decision of the South Jakarta District Court numbered 520/Pdt.sus.Parpol/2019/PN/Jkt.Sel.

Because it has fulfilled the elements of article 426 of Law Number 7 of 2017 concerning Elections that the requirement to become a Provincial or Regency/City Parliament must be a cadre of political parties, the KPU of South Sulawesi Province as

the election organizer issued a decree regarding the replacement of elected candidates. This is justified and in accordance with the results of the author's interview with the KPU Commissioner of South Sulawesi Province who is in the technical division, Namely Asram Jaya.

The presence of a decree issued by the KPU regarding the replacement of elected candidates certainly makes the elected legislative candidates canceled to advance to the legislative seats. This is because in the decree issued kpu contains about the cancellation of the decision on the determination of elected candidates. Padahal this case is still in legal process (Complainant is still filing legal action). So the Complainant in this case Misriani Ilyas assessed the replacement of elected legislative candidates is not in accordance with the procedure as stipulated in the Law.

Because he felt aggrieved by the issuance of the replacement decision by the KPU, the elected candidate, Misriani Ilyas made legal efforts in order to restore his right as an elected legislature. As a legislative candidate elected through elections, Misriani Ilyas was appointed as a legislator because the people had chosen him which means Misriani Ilyas has been entrusted by the people to represent the electoral register.

The author himself considers the KPU is not careful of decision making and is considered not careful when issuing the decision of the KPU by not asking for clarification on the parties to be harmed. This is in accordance with the opinion of Misriani Ilyas who said that he did not get clarification from the KPU as the elected caleg who will be replaced.

The principle of conscientiousness itself is needed where the principle of conscientiousness means that a Decision and Action must be based on complete information and documents in order to support the legality of the determination and implementation of the Decision or Action so that the decision and action in question are prepared carefully before the Decision or Action is determined and carried out.

For example, the case of comparison of elected legislative candidates from Depok is maintained by the KPU even though we know the candidate has been fired from his party. According to the statement of KPU Depok that concerned in the legal process, the DEPOK KPU respects it to ensure the legal certainty of elected candidates, the Depok KPU does not make changes as long as there is no decision that has a fixed legal force (Wardhana, 2019).

From the reference of the problem that occurred in Depok, the KPU of South Sulawesi Province should also respect the right of Misriani Ilyas as an elected candidate who at that time was also still making legal efforts to regain his rights.

The replacement of the chosen candidate according to the author is actually valid, however, it should also pay attention to the relevant factors in the context of why the replacement is done. The decision to unilaterally replace without any clarification and violation of norms can certainly hurt democracy. Not only democracy but, the voice of the people was also lied to by the case of the replacement of this elected candidate.

We know that democracy in an election is very important because elections are the main pillar of a democracy. Through the general election, the people's representatives elected their representatives, then the representatives of the people were given a mandate of people's sovereignty to take care of the country. Through elections the people also show their sovereignty in choosing leaders. So the concept of replacing elected candidates that occur in 2019 can indeed hurt democracy. Similar to the

statement from Titi Anggraini summarized from Perludem who said that the arbitrary act of dismissing the elected officials is very hurtful to the sense of justice and very contrary to our constitution. Sovereignty is in the hands of the people and the people certainly want who they want to sit in the seats of the DPR and DPRD (KPU, 2019).

### **b. Legal Certainty Against Elected Candidates**

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be carried out in a good way. Legal certainty requires that there be legal regulatory efforts in the legislation made by the authorities and authorities, so that the rules have a juridical aspect that can guarantee the existence of certainty that the law serves as a regulation that must be obeyed (Zainal, 2012).

In the case of Misriani Ilyas, he objected to the decision of the South Sulawesi KPU to cancel himself as a candidate for elected legislature, therefore in order to obtain rights and justice for himself, Misriani Ilyas made legal efforts to obtain legal certainty itself and restore the rights he should have obtained.

Because he felt that the process of replacing himself was not in accordance with the legal mechanisms, Misriani Ilyas (result interview with Commissioner KPU Technical Division province South Sulawesi in date November 6th, 2020) submitted a hearing to the DKPP to prove that the KPU as the organizer committed an ethical violation. The result is that some of the KPU RI members were proven to have violated the code of conduct, this is in accordance with the conclusion of the decision of the DKPP RI which said:

“Based on the assessment of the facts revealed in the trial as outlined above, after examining the complainant's testimony, examining the answers and information of the Complainants, and examining all the evidence of the Complainant and the Complainant documents, the Honorary Board of Election Organizers concluded that the Honorary Board of Election Organizers was authorized to adjudicate the Complainant's complaint. The complainant in this case Misriani Ilyas has a legal standing to file a complaint *a quo*. As for some of the complainants who are the KPU of South Sulawesi Province, it is determined that there is no proven violation of ethics, but some of the KPU RI parties are determined to violate the guidelines of conduct of election organizers so that some members of the KPU RI are found guilty”

For the complete information that became the complainant is Misriani Ilyas, while the first to sixth complainant is a member of the KPU of South Sulawesi Province and for the seventh to twelfth complainant are all members of the central KPU RI. Furthermore, the conclusion of the decision of the DKPP RI decided that:

1. Grant the Complainant's complaint in part.
2. Rehabilitate the good name of Teradu I Faisal Amir as Chairman concurrently KPU Member of South Sulawesi Province, Teradu II Fatmawati, Teradu III Upi Hastati, Teradu IV M Asram Jaya, Teradu V Syarifudin Jurdi, Teradu VI Uslimineach as a Member of KPU South Sulawesi Province since this Verdict was read.
3. Rehabilitate the good name of Teradu X Hasyim Asy'ari as a member of the Electoral Commission of the Republic of Indonesia.
4. Imposing harsh warning sanctions on Teradu VII Arif Budiman as Chairman concurrently Member of the Electoral Commission of the Republic of Indonesia, Teradu VIII Evi Novida Ginting Manik, Teradu IX Ilham Saputra, Teradu XI

Viryan, and Teradu XII Pramono Ubaid Tantowi, respectively as Members of the Electoral Commission of the Republic of Indonesia since this Verdict was read.

5. Order the Electoral Commission of the Republic of Indonesia to carry out this Decision as long as the Teradu I, Teradu II, Teradu III, Teradu IV, Teradu V, and Teradu VI no later than 7 (seven) days since the Verdict was read.
6. Ordered the Election Supervisory Board of the Republic of Indonesia to supervise the implementation of this Award.

After seeing the results of the decision of the DKPP RI, it can be said that in the process of replacing Misriani Ilyas was not in accordance with the procedure, therefore some members of the KPU RI got a stern warning.

Further legal proceedings conducted by Misriani Ilyas are to file a lawsuit to the State Administrative Court. After filing a lawsuit to the Makassar State Administrative Court, the decision numbered 137/G/2019/PTUN.Mks. which in the result of the ruling states that:

- a. Grant the Plaintiff's claim to the fullest extent;
- b. Declared null and void the State Administrative Decision issued by the Defendant in the form of the Decision of the Electoral Commission of South Sulawesi Province Number: 220/PL.01.9-Kpt/73/Prov/XII/2019, dated December 2, 2019, concerning Amendments to the Decision of the Electoral Commission of South Sulawesi Province Number: 158/PL.01.9-Kpt/73/Prov/VIII/2019, concerning the Determination of Elected Candidates of members of the Regional People's Representative Council of South Sulawesi Province in 2019, specifically on behalf of Misriani Ilyas, S.P., M.Si. who was replaced by Adam Muhammad, S.T., M.Si.;
- c. Oblige the Defendant to revoke the State Administrative Decision issued by the Defendant in the form of the Decision of the Electoral Commission of South Sulawesi Province Number: 220/PL.01.9-Kpt/73/Prov/XII/2019, dated December 2, 2019, concerning Amendments to the Decision of the Electoral Commission of South Sulawesi Province Number: 158/PL.01.9-Kpt/73/Prov/VIII/2019, concerning the Determination of Elected Candidates of members of the Regional People's Representative Council of South Sulawesi Province in 2019, specifically on behalf of Misriani Ilyas, S.P., M.Si. who was replaced by Adam Muhammad, S.T., M.Si.;
- d. Obliging the Defendant to issue a Decree to restore the status of plaintiff in his position as a candidate for the Regional People's Representative Council of South Sulawesi Province elected to the Electoral District of South Sulawesi II (Makassar B).
- e. Punish defendants and defendants II intervention on a rented basis to pay litigation costs amounting to Rp.387.000,- (Three Hundred Eighty Seven Thousand Rupiah).

By looking at the results of the verdict, the defendants, namely the KPU of South Sulawesi Province, are required to restore the right to elect as a member of the legislature for Misriani Ilyas (result interview with Commissioner KPU Technical Division province South Sulawesi in date November 6th, 2020). However, the fact on the application of the decision of the Makassar State Administrative Court has not been realized because the legal process is still continuing to the cassation level and while waiting for the final result, this is in accordance with the results of interviews from the

author to Asram Jaya who is the commissioner of the KPU of South Sulawesi Province. From the explanation of the commissioner of KPU South Sulawesi the author can take the fact that the KPU actually appreciates the ongoing legal process so that the KPU does not necessarily issue a state administrative decision, but rather waits for the results of a final and binding court ruling. But the question for the author is why in the initial process of replacing Misriani Ilyas which is known basically while taking legal paths there is no delay in replacing the process.

This will give us the view that there are inconsistencies taken by the KPU of South Sulawesi as the election organizer. Kpu as the organizer of elections which is an independent institution must protect the electoral votes of the people in addition KPU can also act as a barrier for political parties so as not to apply arbitrarily to their cadres and prevent the occurrence of oligarchs.

#### 4. Conclusion

The mechanism of replacement of elected legislative candidates has been regulated in the regulation of Law No. 7 of 2017 on Elections. For the regulation KPU as the election organizer only need to run the stage by stage so that at the time of the replacement process itself there is no administrative or procedural error. Furthermore, for the appointment of authority based on the legislation, there is still a discrepancy between several articles that will cause differences of opinion regarding the authority both from the side of political parties and the KPU.

Legal implications for the replacement of elected legislative candidates due to the issuance of decisions from the KPU as the election organizer about the replacement of elected candidates, the right that should be obtained by elected candidates, namely sitting in legislative seats must be null and void. For legal certainty for elected legislative candidates who are replaced, based on the results of the decision of the Makassar State Administrative Court stated that the replacement decision issued by the KPU of South Sulawesi Province was annulled. But until now the legal process continues at the supreme court cassation level so that the legal certainty is still waiting for the results of the

#### References

- Abdulkadir, M. (2004). *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti.
- Anantya Prawira, S., & Diamantina, A. (2019). Election violation and election law enforcement in general election in Indonesia. *Jurnal Hukum Volkgeist*, 4(1), 26.
- Aspan, Z. (2012). Lembaga-Lembaga Negara Pasca Amendemen Konstitusi Dalam Hubungan Fungsional, Pelaporan, dan Pengawasan. *Jurnal Ilmu Hukum Amanna Gappa*, 20(4).
- Farida, R. (2013). Mekanisme Penggantian Antar Waktu (Paw) Anggota DPR dan Implikasinya Dalam Konsep Perwakilan Rakyat. *Jurnal Cita Hukum*, 1(2), 198.
- Farisa, F. C. (2019). Fakta Mantan Caleg Gerindra Dipecat Sehari Sebelum DIlantik, Putusan PN Jakarta Selatan.
- Hadi, S., & Michael, T. (2017). Principles of Defense (Rechtmatigheid) In Decision Standing of State Administration. *Jurnal Cita Hukum*, 5(2).

- Hasrul, M., & Pradana, S. A. (2017). *Urgensi Staf Ahli Kepala Daerah*. Yogyakarta: Litera.
- Indroharto. (1994). *Asas-Asas Umum Pemerintahan yang Baik* (p. 65). p. 65. Bandung: Citra Adhya Bakti.
- Indroharto. (2002). *Usaha Memahami Peradilan Tata Usaha Negara*. Jakarta: Pustaka Sinar Harapan.
- KPU. (2019a). Pentingnya Pemilu dan Demokrasi.
- KPU. *Peraturan Komisi Pemilihan Umum Republik Indonesia Nomor 5 Tahun 2019 Tentang Penetapan Pasangan Calon Terpilih, Penetapan Perolehan Kursi, Dan Penetapan Calon Terpilih Dalam Pemilihan Umum.*, (2019).
- NKRI. *Undang-undang Nomor 2 Tahun 2008 tentang Partai Politik.*, (2008).
- NKRI. *Undang-undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.*, (2017).
- Perludem. (2019). Perludem Nilai Parpol Langgar Konstitusi Karena Asal Ganti Caleg Terpilih.
- Ridwan, H. (2006). *Hukum Administrasi Negara*. Jakarta: Rajawali Pers.
- Syafie. (2002). *Sistem Pemerintahan Indonesia*. Jakarta: Rineka Cipta.
- Wardhana, S. (2019). Caleg Terpilih Dipecat PKB Dipertahankan KPU, Apa Alasannya?
- Zainal, A. (2012). *Pengantar Tata Hukum Indonesia*. Jakarta: Rajawali Pers.