

Does the Cancellation Victory Foreign Nationals in Local Democracy: Evidence from United Kingdom



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ABSTRACT

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The main requirement to become a regional head candidate is to be an Indonesian citizen. In the 2020 Pilkada, it was found that a foreign citizen won the Regional Head Election. This certainly raises a legal dilemma or polemic regarding the inauguration process. Whether the person concerned can be inaugurated as regional head or canceled. The formulation of the problem raised in this research is about the legal implications of the victory of foreigners in the Regional Head Election and the legal construction of the cancellation of the inauguration. This research is normative juridical research with a concept approach, legislation approach, and case approach. The results of the study found four things that resulted from the victory of foreigners in the Regional Head Election. Namely, the weakness of the regulation, the negligence of the organizers, the validity period of the dispute resolution of the limited nomination requirements, and the confusion to advance or continue at the inauguration stage. The choice of legal construction as a solution that can be taken is to cancel the inauguration of foreign election winners. The cancellation process can go through the judicial process through the mechanism of disputing the results in the Constitutional Court. Cancellation of the inauguration can also be done by the executive body through a decision from the Ministry of Home Affairs.



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1. Introduction

Regional Head Elections are one form of realization of the implementation of the constitutional democratic system in Indonesia.¹ In the conception of the Unitary State of the Republic of Indonesia which implements decentralization, filling the position of regional head is a form of filling state officials so that the implementation of regional government functions as part of the central government can be carried out. Regional head elections are democratically elected as a tangible manifestation of people's sovereignty to elect regional heads who are

¹ Sulardi Sulardi, 'Building Quality of Democracy and Democratization of Political Party's Leader Election', *Jurnal Media Hukum*, 27.1 (2020) <https://doi.org/10.18196/jmh.20200140>

competent to lead their regions². This process provides an opportunity for the people to elect leaders who will represent and take care of regional interests.³

The implementation of these elections is open to all citizens so that every citizen has the right to be elected and vote. This open nature is in line with the provisions of Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that every citizen has the right and equal opportunity in government. In addition, Article 7 paragraph (1) Law number 10 of 2016 concerning Regional Elections (*UU Pilkada*) also states that every citizen has the right to obtain equal opportunities to nominate themselves and be nominated as Candidates for Governor and Deputy Governor, Candidates for Regent and Deputy Regent, and Candidates for Mayor and Deputy Mayor. This means that anyone can run as a candidate for regional head or candidate for deputy regional head either through a political party or individual⁴.

A person can be declared as a candidate for regional head and deputy regional head if the person concerned is an Indonesian citizen. This is regulated in Article 4 of the General Election Commission Regulation Number 1 of 2020 concerning Candidacy for the Election of Governors and Deputy Governors, Regents and Deputy Regents, or Mayors and Deputy Mayors. In its constituents, Indonesian citizens who can run as candidates for regional heads can include; indigenous Indonesian citizen. An indigenous citizen is an Indonesian person who, based on the principle of *ius saunas*, has been an Indonesian citizen since his/her birth; Indonesian citizen who is a foreigner who has been designated as an Indonesian citizen and regional head candidates are only for Indonesian citizens and not residents. Citizens and residents are two different things. Citizens are automatically residents but not all residents are citizens⁵.

The candidate for regional head and deputy regional head does not fulfill these three elements, the candidate pair for regional head and deputy regional head cannot be automatically determined as a candidate pair for regional head and deputy regional head participating in the election. The problem is if the foreign citizenship status of regional head candidates is known after the winner of the

²Bonaventura Pradana Suhendarto and Retno Saraswati, 'Implikasi Hukum Status Kewarganegaraan Asing Pada Calon Terpilih Dalam Pemilihan Kepala Daerah', *Jurnal Pembangunan Hukum Indonesia*, 4.3 (2022), 382–401 <https://doi.org/10.14710/jphi.v4i3.382-401>

³Rizki Ramadani and Farah Syah Rezah, 'Regional Head Election During COVID-19 Pandemic: The Antinomy in the Government Policies', *Yuridika*, 36.1 (2021), 213 <https://doi.org/10.20473/ydk.v36i1.23528>

⁴Gerrit J Gonschorek, 'Subnational Favoritism in Development Grant Allocations: Empirical Evidence from Decentralized Indonesia', *World Development*, 139 (2021), 105299 <https://doi.org/https://doi.org/10.1016/j.worlddev.2020.105299>

⁵Blane D. Lewis, Hieu T.M. Nguyen, and Adrianus Hendrawan, 'Political Accountability and Public Service Delivery in Decentralized Indonesia: Incumbency Advantage and the Performance of Second Term Mayors', *European Journal of Political Economy*, 64.March (2020), 101910 <https://doi.org/10.1016/j.ejpoleco.2020.101910>

regional head election is determined. As happened in the regional elections in East Nusa Tenggara in 2020 where the winner of the regional head election is a foreign national. Orient Patriot Riwu Kore as the regional head candidate who received the most votes with 21,359 votes or 48.3% is known to have US citizenship status. Even if the selected candidate passes the verification requirements and is ultimately elected with the majority of votes, if the findings of the legal facts of the violation are ignored and he is still appointed as regional head, this will harm the spirit of democracy.⁶

The impact of electing a regional head who has foreign citizenship can cause distrust in the local community. The public may doubt the loyalty and involvement of elected regional heads in domestic affairs and local issues. In addition, foreign regional heads may lack understanding of cultural, social, and economic issues specific to that region. This can hinder his ability to make the right decisions. Citizenship status becomes very meaningful when it is determined in the conditions for nomination as regional heads or government officials as well as for citizens as voters, such as in regional elections. This is not just a requirement, but in fact, citizenship status can show loyalty or allegiance to the country and prove the existence of a sociological emotional bond with the people of the region. The existence of other citizenship documents causes Indonesian citizenship status to be terminated automatically because Indonesia does not adhere to dual citizenship. The loss of this status means that a person cannot obtain political rights in Indonesia and the determination of the selected candidate must be canceled due to the loss of Indonesian citizenship status. When a person has been declared a foreigner, all his rights as an Indonesian citizen can no longer be used or the person concerned has been legally blocked from his rights as a citizen.⁷

In previous research entitled "Disqualification of Elected Regional Head Candidates and Their Resolution in the Indonesian Constitutional System", Mahardika stated that the disqualification of elected regional head candidates has the potential to nullify democracy and create legal uncertainty. According to Heidenreich, the concept of democracy implies two basic elements: the protection of individual rights by the rule of law and the possibility of determining the future through elections or other forms of participation⁸. Democracy is synonymous with

⁶ Sholahuddin Al and Asrul Ibrahim, 'Does the Constitutional Court on Local Election Responsive Decisions?', *Journal of Human Rights, Culture and Legal System*, 3.3 (2023), 569–96 <https://doi.org/https://doi.org/10.53955/jhcls.v3i3.74>

⁷ Asno Azzawagama Firdaus and others, 'Indonesian Presidential Election Sentiment: Dataset of Response Public before 2024', *Data in Brief*, 52 (2024), 109993 <https://doi.org/https://doi.org/10.1016/j.dib.2023.109993>

⁸ Felix Heidenreich, 'How Will Sustainability Transform Democracy? Reflections on an Important Dimension of Transformation Sciences', *GAIA - Ecological Perspectives for Science and Society*, 27.4 (2018), 357–62 <https://doi.org/10.14512/gaia.27.4.7>

protecting the right to vote for every citizen, in the sense that general elections at both the local and national levels are a manifestation of democratic values. Departing from the basic concept of democracy, regulatory changes, whether in the form of laws, government regulations, General Election Commission regulations, *Bawaslu* regulations, Constitutional Court regulations, or Supreme Court regulations, always try to place the protection of the people's voice as the main priority in policy making.⁹

The *Pilkada* law is one of the laws and regulations that are often changed to find the right formula for organizing elections. The *Pilkada* law as a regulation is sometimes unable to accommodate several issues that always develop following the social dynamics that exist in people's lives. Although it has undergone several changes, several problems in organizing the elections to date still often occur and even always lead to conflict. The theoretical perspective used in this research is legal certainty. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented positively. Legal certainty emphasizes the power of legal regulation in legislation made by parties who have authority and are sovereign so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.¹⁰

Furthermore, Jaconelli in his research explained that the constitution always stipulates personal qualifications for holding electoral office which are relatively uncontroversial such as a link of birth or nationality between a person and the polity in question. These could be viewed as seeking to assure a minimal association, or even a bond of loyalty, between the individual and the polity. In the case of office holders such a bond may be strengthened, or simply created, by an obligation on their part to take an oath before taking up their position. However, the terms of any oath that is to be sworn may create further problems in turn, as evidenced by several instances, both historical and contemporary¹¹. The problem is that the Regional Election Law in Indonesia does not accommodate the regulations and actions that must be taken regarding the invalidity of the requirements for elected regional heads which were only discovered after the stipulation.

There is no legal basis regarding the cancellation of the appointment of an elected regional head due to violations during registration or verification of the completeness of prospective candidates' documents which have passed. The case of the victory of foreign nationals in the regional head elections raises questions

⁹ Suparto Suparto and others, 'Establishment of Electoral Court in Indonesia: Problems and Future Challenges', *Journal of Indonesian Legal Studies*, 8.2 (2023) <https://doi.org/10.15294/jils.v8i2.72316>

¹⁰ Chintya Devi, 'Kajian Hukum Pencabutan Hak Politik Pada Pelaku Tindak Pidana Korupsi Suap Berdasarkan Teori Kepastian Hukum', *Yustisia Tirtayasa: Jurnal Tugas Akhir*, 1.1 (2021) <https://doi.org/10.51825/yta.v1i1.11204>

¹¹ Joseph Jaconelli, 'Constitutional Disqualification: A Critique of English and English-Derived Law', *ICL Journal*, 14.2 (2020), 167–97 <https://doi.org/10.1515/icl-2019-0056>

about the legality and legal suitability of the participation of foreign nationals in the political process in Indonesia and the citizenship status of *Pilkada* participants known after the determination of the winner. The legal space for canceling the inauguration of foreign nationals who won the *Pilkada* has not been explicitly regulated in the *Pilkada* law or even in other laws and regulations. Thus, there is still a legal vacuum (*rech vacuum*) so a new legal construction is needed to legitimize the cancellation of the inauguration of *Pilkada* winners.

This article aims to compare the election systems implemented in Indonesia and the United Kingdom to provide a legal view of the construction of canceling the victory of foreign nationals in regional head elections in Indonesia. The regional election system in England is based on the Westminster system, which has been tested for many years. This includes an electoral system with one person, one vote representation, widely implemented throughout the UK and Commonwealth countries. Based on the description above, this article will analyze what impact the cancellation of the victory of a foreign national regional head candidate after the determination of the elected candidate has on the regional government.

2. Research Method

This research on the legal construction of the cancellation of election winners is Juridical-Normative legal research with a concept approach, statue approach, and case approach.¹² The data used is secondary data with a literature study based on primary legal materials, namely laws and legal theories, and also secondary legal materials including books and journals related to the elections.¹³ The technique of analyzing legal materials is prescriptive. Secondary data that has been codified is then used in research and focuses on two aspects of legal material, primary legal material, namely a number of regulations related to the research theme, namely the disqualification of regional head candidates elected in the election, including Law Number 10 of 2016 and Law Number 6 of 2020 concerning the Election of Governors, Regents and Mayors Becomes Law (Election), Law Number 48 of 2009 concerning Judicial Power and Law Number 7 of 2020 in conjunction with Law Number 24 of 2003 concerning Constitutional Court; and (b) secondary legal materials, in the form of reference books and journals related to the research theme as well as further studying primary legal materials at a theoretical level and how they are relevantly implemented.¹⁴

¹² Abdul Kadir Jaelani, Ahmad Dwi Nuryanto, and others, 'Legal Protection of Employee Wage Rights in Bankrupt Companies: Evidence from China', *Legality: Jurnal Ilmiah Hukum*, 31.2 (2023), 202–23 <https://doi.org/https://doi.org/10.22219/ljih.v31i2.25874>

¹³ Abdul Kadir Jaelani, Muhammad Jihadul Hayat, and others, 'Green Tourism Regulation on Sustainable Development: Droning from Indonesia And', *Journal of Indonesian Legal Studies*, 8.2 (2023), 663–706 <https://doi.org/https://doi.org/10.15294/jils.v8i2.72210>

¹⁴ Abdul Kadir Jaelani, Resti Dian Luthviati, and Muhammad Jihadul Hayat, 'Halal Tourism Sector and Tax Allowance Policy: A Case Study Observed from Normative Problems to Effective

3. Results and Discussion

The Cancellation Victory Foreign Nationals in Local Democracy Indonesia

The meaning of cancellation of victory in the election context is not explained directly in various existing regulations in Indonesia. However, Article 71 of the Regional Election Law interprets disqualification as the same as the cancellation of the status of regional head candidate pairs to contest elections either by the Court, the General Election Commission, or other parties. Meanwhile, on the ballotpedia site, candidate disqualification is interpreted as denying a candidate the right to an election conducted by the Court, General Election Commission or Political Party. At times, an individual who has appeared on preliminary candidate lists does not appear on the official election ballot. Ballotpedia uses the term disqualified when a person announces a candidacy or files for an election, but another entity—such as a court, election authority, or political party—prevents him or her from appearing on the final ballot. This may also be referred to as candidate removal.

In essence, the democratic parties in these two regions have produced elected candidates who were chosen directly by the people. Based on the Indonesian legal system, implicit disqualification of the status of a Regional Head Candidate can no longer be carried out once voting has taken place. If voting has been carried out, then the dispute related to the results is no longer the eligibility of the candidates taking part in the contest. This is because voting is a form of popular sovereignty, if there is fraud in voting, then the fraud that has an impact on the election results should be the object of dispute. The existence of other citizenship documents causes the status of Indonesian citizenship to be automatically canceled because Indonesia does not embrace dual citizenship. The loss of status causes a person to be unable to obtain political rights in Indonesia and the determination of the elected candidate must be canceled due to the loss of Indonesian citizenship status.¹⁵

In a sense, an election winner who is no longer an Indonesian citizen is the same as an election winner who dies before being inaugurated. Moreover, the Minister of Law and Human Rights has officially revoked Orient P. Riwu Kore's citizenship status. The cancellation of Orient P. Riwu Kore on the pretext of fulfilling the element of permanent disability because the person concerned is no longer an Indonesian citizen, of course, still requires further administrative processes or legal activities. The legal implications of the phenomenon of foreigners winning in the elections are as follows: First, the weakness of the Election Law Substance. The election of Orient P. Riwu Kore in the 2020 Regional Election of Sabu Raijua Regency in East Nusa Tenggara (NTT) is a form of

Implementation', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.2 (2023), 185–210 <https://doi.org/10.18326/ijtihad.v23i2.185-210>

¹⁵ Husni Mubarrak and Faisal Yahya, 'Contestation on Religious Interpretation in Contemporary Aceh Shari'a: Public Caning in Prison as the Case of Study', *JURIS (Jurnal Ilmiah Syariah)*, 22.2 (2023), 213–22 <https://doi.org/http://dx.doi.org/10.31958/juris.v22i2.10258>

weakness in Pilkada law. The legal weakness is the unavailability of time space provided by the law related to the status of citizenship of regional head candidates who are still in the clarification stage. He cannot obtain his rights as an Indonesian citizen, including the right to be elected as a regional head, so his determination as an elected candidate is canceled by the Constitutional Court even though there is no legal regulation that accommodates administrative violations that are only known after the determination of elected candidates.¹⁶

Second, the negligence of the election organizers. An act can be said to contain negligence if the act is "de nodige en mogelijke voorzichtigheid en oplettendheid" or not accompanied by attention and caution that should be done¹⁷. Pilkada organizers, in this case, the Regional General Election Commission (KPUD) an institution that is authorized to conduct administrative verification of each candidate for regional head and deputy regional head who registers as a participant in the Pilkada. In the case of Orient P. Riwu Kore, the requirements regarding the status of citizenship of the person concerned have submitted evidence of being an Indonesian citizen, both the Identity Card (KTP) and Family Card (KK), even the Sabu Regency KPUD has also clarified to the Population and Civil Registry Office. However, once again the element of negligence for the KPUD is that it did not conduct in-depth verification considering that the KPUD also knew that Orient P. Riwu Kore had lived abroad. The KPUD's decision on the determination of Pilkada participants is *Presumptio Iustae Causa*. Namely, a decision that is considered valid as long as it has not been canceled by the court or annulled by the KPUD.¹⁸

Third, the validity period of the dispute resolution of the nomination requirements. If Orient Patriot Riwu Kore's membership status is to be challenged through the State Administrative Dispute (SKTUN) mechanism, it is a process that has expired by law. This is because the SKTUN settlement dispute period ends at the latest or can be followed up if it is decided 30 days before the voting time. (Article 154 paragraph 12 of Law 10 of 2016). In another case, namely the decision of the Lampung Province Bawaslu, which disqualified Eva Dwiana-Deddy Amarullah as a candidate pair for the Bandar Lampung City (Barlam) regional elections. In the decision dated January 5 2021, Eva-Deddy was declared legally and convincingly proven to have committed structured, systematic and massive violations in the form of promising and/or providing money or other materials to

¹⁶ Eny Kusdarini and others, 'Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia', *Heliyon*, 8.12 (2022), e11932 <https://doi.org/10.1016/j.heliyon.2022.e11932>

¹⁷ Ernest Sengi, 'Konsep Culpa Dalam Perkara Pidana Suatu Analisis Perbandingan Putusan Nomor 18/Pid.B/2017/Pn.Tobelo', *Era Hukum - Jurnal Ilmiah Ilmu Hukum*, 17.2 (2019) <https://doi.org/10.24912/erahukum.v17i2.5993>

¹⁸ Rumayya and others, 'The Local Economy and Re-Election of Incumbent District Leaders in Indonesia', *Heliyon*, 6.5 (2020), e04098 <https://doi.org/https://doi.org/10.1016/j.heliyon.2020.e04098>

influence election organizers and/or voters. As regulated in Article 73 paragraph (2) Law 10 of 2016 concerning the Election of Governors, Regents and Mayors.¹⁹

The Bawaslu of Province Lampung ordered the Barlam KPU to cancel the KPU's decision regarding the appointment of Eva-Deddy as a candidate pair. Not long after, the decision to cancel was issued. In fact, Eva-Deddy received the most votes in the regional elections. Eva-Deddy got 57.30 percent of the vote, far behind candidate pair number 1, Rycko Menoza SZP-Johan Sulaiman (21.21 percent) and candidate number 2, Muhammad Yusuf Kohar-Tulus Purnomo Wibowo (21.45 percent).²⁰ Article 158 paragraph (1) and paragraph (2) of Law Number 10 of 2016 is an open legal policy that forms laws as an effort to encourage the development of increasingly mature ethics and political culture. Not all cases of dispute over regional head election results submitted to the Constitutional Court meet the vote difference threshold in Article 158 paragraph (1) and paragraph (2) of Law no. 10 of 2016. The breakthrough made by the Constitutional Court was an effort to realize substantive justice for justice seekers, but this condition gave rise to legal uncertainty.²¹ The someone who is not an Indonesian citizen (WNI) is determined as a participant in this regional election, his membership status is automatically null and void. Null and void means that null and void are events or actions that is considered to have never existed, and the situation is restored as before or as before the canceled stipulation or decision. The resulting legal consequences apply retroactively.²²

The legal process for *Pilkada* disputes after the determination of the election winner is that the Election Results Dispute Case can be resolved.²³ According to Article 156 of Law 10 of 2016 on *Pilkada*, the Election Results Dispute Case is a dispute between a regional head candidate pair or *Pilkada* participant and the Regional General Election Commission as the election organizer regarding the determination of the vote acquisition of the election results. The scope of the regional head election results dispute case focuses on matters that affect the vote

¹⁹ D N Aisyah and others, 'Democracy and Pandemic: Evaluating Health Protocol Compliance in Regional Election Using Integrated Monitoring System', *International Journal of Infectious Diseases*, 116 (2022), S31 <https://doi.org/https://doi.org/10.1016/j.ijid.2021.12.074>

²⁰ Mohammad Syaiful Aris, 'Opportunities and Challenges in the Implementation of Plurality - Majority (District) Electoral System for Strengthening the Indonesian Presidential System', *Yuridika*, 37.3 (2022), 563–90 <https://doi.org/10.20473/ydk.v37i3.37604>

²¹ M. Abdim Munib, Made Warka, and Slamet Suhartono, 'Limitation of Application for Cancellation of Election Results Regional Head in Justice Perspective', *International Journal of Multicultural and Multireligious Understanding*, 8.12 (2021), 262 <https://doi.org/10.18415/ijmmu.v8i12.3264>

²² Dyah Margani Utami and others, 'The Role of the 30% Threshold for Islamic Parties: A Fast-Growing Middle Class and Religion-Based Political Preferences in Indonesia', *Heliyon*, 10.4 (2024), e25700 <https://doi.org/https://doi.org/10.1016/j.heliyon.2024.e25700>

²³ Nasrullah Nasrullah and Tanto Lailam, 'Dinamika Dan Problematika Politik Hukum Lembaga Penyelesai Sengketa Hasil Pemilihan Kepala Daerah Di Indonesia', *Jurnal Media Hukum*, 24.1 (2017) <https://doi.org/10.18196/jmh.2017.0084.1-13>

acquisition of the election results or can be described as follows, the election of the applicant as a candidate pair for governor and deputy governor, the election of the applicant as a candidate pair of regent and deputy regent; and the election of the applicant as a candidate pair for mayor and deputy mayor.²⁴

In the Indonesian legal system, the cancellation or revocation of a person's rights can be done through executive and judicial channels. From the executive route, it can be in the form of cancellation by the Ministry of Home Affairs (*Kemendagri*) as a central official responsible for regional government affairs. Meanwhile, the judicial route can be through the Dispute Results Case at the Constitutional Court. Article 10 paragraph (1) letters a to d of Law Number 24 of 2003 concerning the Constitutional Court regulates the authority of the Constitutional Court (constitutionally entrusted powers) are a. Examine the law against the 1945 Constitution. b. Decide disputes over authority between state institutions whose authority is granted by the 1945 Constitution. c. Decide on the dissolution of political parties. d. Decide disputes about election results. Deciding disputes about election results.²⁵

The Constitutional Court was established as a guardian of the Constitution and interpreter of the Constitution. This means that the Constitutional Court is an institution that must ensure that the norms in the Constitution can run real and active in the life of the nation and state. So that the Constitutional Court must be present when things happen that are contrary to the Constitution. The victory of foreigners in the *Pilkada* is contrary to Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that every citizen has the right to equal opportunity in government. Article 28D paragraph (3) clearly states "every citizen", meaning that only Indonesian citizens are entitled to opportunities in government, especially in public positions such as regional heads. A foreign citizen or a citizen who has dual citizenship is a person who does not qualify as an Indonesian citizen.²⁶

In terms of realizing disqualification through the judicial process at the Constitutional Court, the case of the *Pilkada* of Sabu Rajiaman NTT Regency must be submitted to the Constitutional Court because the Constitutional Court cannot carry out the judicial process without a request considering that the Constitutional

²⁴ Kurnia Arofah and Susilastuti Dwi Nugrahajati, 'Political Marketing Conducted by Legislative Candidates in Indonesia: Study of Public Transportation as Transit Media in Medan on Presidential Election 2014', *Procedia - Social and Behavioral Sciences*, 155 (2014), 153–58 <https://doi.org/https://doi.org/10.1016/j.sbspro.2014.10.272>

²⁵ Anom Wahyu Asmorajati and others, 'Systematic Literature Review of Postponed Elections during COVID-19: Campaigns, Regulations, and Budgets', *Heliyon*, 10.4 (2024), e25699 <https://doi.org/https://doi.org/10.1016/j.heliyon.2024.e25699>

²⁶ Yuki Fukuoka and Chanintira na Thalang, 'The Legislative and Presidential Elections in Indonesia in 2014', *Electoral Studies*, 36 (2014), 230–35 <https://doi.org/https://doi.org/10.1016/j.electstud.2014.09.007>

Court as a judicial institution is a passive institution or cannot look for cases to be tried. Determining legal standing in the Sabu Regency election case is not easy. If the applicant is the losing candidate pair as in the case of a dispute over the results in general, it is very difficult to realize because the vote difference between the Orient P. Riwu Kore-Thobias Uly candidate pair and the losing candidate pair has a vote difference above ten percent. Where the Orient P. Riwu Kore-Thobias Uly pair received 48.6% while the other candidate pairs, namely the Nokodemus N. Rihi Heke-Yohanis Uly Kale pair, received 30.3% of the votes and the Takem Irianto Radja Pono and Herman Hegi Radja Haba pair 20.9%.

Table 1: Vote Acquisition of Sabu Rajiaman District Election Results NTT

| No | Name of Candidate Couple | Vote Acquisition |
|----|---|-----------------------|
| 1 | Nokodemus N. Rihi Heke-Yohanis Uly Kale | 13.292 or 30,1% votes |
| 2 | Orient P. Riwu Kore-Tobias Uly | 21.359 or 48,3% votes |
| 3 | Takem Irianto Radja Pono-Herman Hegi Radja Haba | 9.569 or 21,6% votes |

The significant difference in votes between the winner of the *Pilkada* and the other candidate pairs certainly closes the space for the losing candidate pairs to be able to file a case to the Constitutional Court through the type of election result dispute case. This is because the requirement to have legal standing for a candidate pair who wants to submit a case to the Constitutional Court is the difference in votes between the applicant and the candidate pair that obtained the most votes where the maximum limit of the difference in votes cannot exceed 0.5-2%. The provisions regarding this vote difference threshold are regulated in Article 158 of Law No. 10/2016 on *Pilkada*.

However, the obstacle regarding the vote difference threshold can be set aside because although the regulation on the vote difference threshold has been regulated in Article 158 of Law 10 of 2016 concerning *Pilkada* and PMK Number 7 of 2020, the Constitutional Court has conducted a judicial process on *PHPkada* whose vote difference exceeds the threshold under the pretext of a real and visible violation. In this case, the case that can be used as an example is in the *Pilkada* of Yapen Islands Regency, Papua Province. Where in this case, the Constitutional Court canceled the KPU's decision on the determination of the vote acquisition of the election results and ordered a re-voting (PSU) by including the pair Tony Tesar, S.Sos, and Frans Sanadi, B.Sc., S.Sos., M.B.A which was disqualified by the KPUD as a participant in the *Pilkada*²⁷. Another problem that will be faced is regarding the time of filing cases to the Constitutional Court where the Constitutional Court will hear disputes over *Pilkada* results if submitted within 3x24 hours of the KPUD's determination of the election results so that if a case is submitted to the Constitutional Court more than three days from the time of the

²⁷ Cahyo Pamungkas and Devi Triindriasari, 'Pemilihan Gubernur Papua 2018: Politik Identitas, Tata Kelola Pemerintahan Dan Daya Hidup Orang Papua', *Jurnal Masyarakat Dan Budaya*, 20.3 (2019) <https://doi.org/10.14203/jmb.v20i3.721>

KPUD's determination of the election results, the case cannot be submitted to the Constitutional Court or is out of date by law so that if the Constitutional Court hears a case that is out of date by law, the Constitutional Court's decision will be declared null and void.

The Constitutional Court hears the issue of the nationality status of the winner of the Regional Head Election and issues a disqualification decision because it is considered ineligible as a participant in the Regional Head Election, it is a valid decision before the law because the basis of the Constitutional Court's decision is the constitutionality of a person's validity as a participant in the Regional Head Election. Thus, the authority of the Constitutional Court to disqualify the winner of the Regional Election with foreigner status is more important and must be prioritized considering the position of the 1945 Constitution is higher than the Law.²⁸

The Cancellation Victory Foreign Nationals in Local Democracy United Kingdom

There are five types of elections in the United Kingdom: elections to the House of Commons of the United Kingdom (commonly called 'general elections' when all seats are contested), elections to devolved parliaments and assemblies, local elections, mayoral elections, and police and crime commissioner elections. In local elections, councillors are elected forming the local administrations of the United Kingdom. A number of tiers of local council exist, at region, county, district/borough, and town/parish levels, and several regions directly elect mayors. Some of the laws governing regional head elections in England include, the Representation of the People Act 1983, The Local Government Act 2000 and The Greater London Authority Act 1999. This law regulates general elections in England and contains provisions regarding the election of members of parliament as well as regional head elections at the local level. This law also regulates regional head elections at the local level, including the election of chief executives in regional councils and provided for the election of the mayor of London, members of the London Assembly, and the London Assembly as a special local government body in London.

A variety of voting systems are used for local elections. In Northern Ireland and Scotland, the single transferable vote system is used²⁹, whilst in most of United Kingdom and Wales the single-member plurality system is used³⁰. The remainder of United Kingdom (including all of the London Boroughs) and Wales use the

²⁸ Ahmad Siboy, 'The Integration of the Authority of Judicial Institutions in Solving General Election Problems in Indonesia', *Legality: Jurnal Ilmiah Hukum*, 29.2 (2021), 237–55 <https://doi.org/10.22219/ljih.v29i2.15608>

²⁹ Paul Mitchell, 'The Single Transferable Vote and Ethnic Conflict: The Evidence from Northern Ireland', *Electoral Studies*, 33 (2014), 246–57 <https://doi.org/10.1016/j.electstud.2013.07.022>

³⁰ Andrew C. Eggers and Alexander B. Fouirnaies, 'Representation and District Magnitude in Plurality Systems', *Electoral Studies*, 33 (2014), 267–77 <https://doi.org/10.1016/j.electstud.2013.08.006>

plurality at-large system, except for the elections of the Mayor and Assembly of the Greater London Authority (GLA). Prior to the passage of the Elections Act 2022, mayoral elections used the supplementary vote (SV) system. The Act changed these to use first-past-the-post (FPTP) for future elections. First-past-the-post voting (FPTP or FPP) is an electoral system wherein voters cast a vote for a single candidate, and the candidate with the most votes wins the election.³¹

The author takes the example of regional elections in London. The Greater London Returning Officer (GLRO) engages with political parties, candidates, and agents on how London Elects will manage the nomination process. Each candidate must declare that they meet the legal qualifications. Candidates must be: At least 18 years old on the day of their nomination; A citizen of the UK, Republic of Ireland, European Union or Commonwealth; Registered to vote in London, or have lived, worked, rented, or owned property in London for the past 12 months. There are also several disqualifications from standing such as: Working for the Greater London Authority, the London Fire Commissioner, the Mayor's Office for Policing and Crime, Transport for London, or a Mayoral Development Corporation. Other local authority staff holding a politically restricted post also cannot stand; Being the subject of a bankruptcy restrictions order or interim order; Being sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine, during the five years before polling day; Being disqualified under the Representation of the People Act (RPA) 1983 (which covers corrupt or illegal electoral practices and offenses relating to donations); Being disqualified under the Audit Commission Act 1998.³²

Standing for election for Mayor of London. Candidates are required to submit the following to the Greater London Returning Officer (GLRO): A completed nomination form; a total of 330 signatures of people on the electoral register in London supporting the nomination, consisting of 10 from each London borough and 10 from the City of London; A signed and witnessed consent to nomination form; A deposit of £10,000, which is returned if the candidate gets more than five percent of first-choice votes cast in the election for Mayor; A certificate from the registered political party's nominating officer, where the candidate is not an independent; A signed request to use a registered political party's emblem on the ballot paper, if the candidate wishes to use an emblem.³³

³¹ Hasto Kristiyanto, Satya Arinanto, and Hanief Saha Ghafur, 'Institutionalization and Party Resilience in Indonesian Electoral Democracy', *Heliyon*, 9.12 (2023), e22919 <https://doi.org/https://doi.org/10.1016/j.heliyon.2023.e22919>

³² Erlan Wijatmoko, Armaidly Armawi, and Teuku Faisal Fathani, 'Legal Effectiveness in Promoting Development Policies: A Case Study of North Aceh Indonesia', *Heliyon*, 9.11 (2023), e21280 <https://doi.org/10.1016/j.heliyon.2023.e21280>

³³ N. Freudenberg and S. Atkinson, 'Getting Food Policy on the Mayoral Table: A Comparison of Two Election Cycles in New York and London', *Public Health*, 129.4 (2015), 295–302 <https://doi.org/10.1016/j.puhe.2015.02.018>

The mayor of a diverse London borough was stripped of his office after a judge found he had committed multiple electoral fraud and corruption offenses in a political career defined by playing the “race card” to secure power. Lutfur Rahman could face a police investigation after his victory in May 2015 to become the directly-elected mayor of Tower Hamlets was declared void by a judge, who ruled he had “cynically perverted” the solidarity of Bangladeshi voters and made repeated claims of racism to silence critics. At that time, the dismissal of the 49-year-old represented vindication for four voters who had brought a rare petition to have an election overturned and faced vilification as well as a ruinous legal bill if they had lost.³⁴

The judge said the former mayor, who was elected to a second term last year, had focused his electoral machine on the borough’s large Bangladeshi community - effectively bribing voters by targeting them with generous grants and using the influence of a senior cleric to tell Muslims it was their duty to vote for him. The evidence laid before this court has disclosed an alarming state of affairs in Tower Hamlets. This is not the consequence of the racial and religious mix of the population, nor is it linked to any ascertainable pattern of social or other deprivation. It is the result of the ruthless ambition of one man.³⁵ The judge found that the former mayor had run a “ruthless and dishonest” campaign to portray his labour rival in 2014, John Biggs, as a racist and also worked “hand in glove” with the head of the borough’s council of mosques to ensure that Muslims were told they had a duty vote for Mr Rahman. A key tool in Mr. Rahman’s electoral armory was “bribery by grant”, under which he and a small number of aides took control of deciding the sums to be donated to community groups, the judge found. The controversial mayor lost his powers over grants last year when Communities Secretary Eric Pickles sent in commissioners to take over a number of functions in Tower Hamlets council. Mr Pickles said yesterday’s judgment was a “vindication” of that decision.³⁶

The real losers in this case are the citizens of Tower Hamlets and, in particular, the Bangladeshi community. Their natural and laudable sense of solidarity has been cynically perverted into a sense of isolation and victimhood, and their devotion to their religion has been manipulated – all for the aggrandizement of Mr Rahman. The result has been to alienate them from the other communities in the

³⁴ Holly Ann Garnett and Toby S James, ‘Electoral Backsliding? Democratic Divergence and Trajectories in the Quality of Elections Worldwide’, *Electoral Studies*, 86 (2023), 102696 <https://doi.org/https://doi.org/10.1016/j.electstud.2023.102696>

³⁵ Anyualatha Haridison, ‘Why Did the Common Objective Be Biased in the Execution Collaborative Governance Program? The Case from Dayak Indonesia’, *Land Use Policy*, 140 (2024), 107050 <https://doi.org/https://doi.org/10.1016/j.landusepol.2024.107050>

³⁶ Paul K Gellert and Sarah D’Onofrio, ‘Flex Commodities and Intertwining World-Ecologies: Indonesian Palm Waste as an Environmental Fix in the New Zealand Dairy Industry’, *Political Geography*, 108 (2024), 103038 <https://doi.org/https://doi.org/10.1016/j.polgeo.2023.103038>

borough and to create resentment. Mr Rahman and Mr Choudhury... spent a great deal of time accusing their opponents, especially Mr Biggs, of 'dividing the community' but, if anyone was 'dividing the community', it was they. Events of recent months in contexts very different from electoral malpractice have starkly demonstrated what happens when those in authority are afraid to confront wrongdoing for fear of allegations of racism and Islamophobia. The law must be applied fairly and equally to everyone. Otherwise, we are lost.

Foreign citizenship status, in general, is not a reason for canceling the election of an elected regional head. The UK allows foreigners who have legal residence status (resident) to participate in some elections, especially at the local level. Foreign citizenship status is not necessarily a barrier to running for office or voting in local elections. In many cases, the primary consideration is legal residence status, not citizenship status. If someone is a legal resident of the UK and meets other requirements, then they can usually stand and vote in local elections in accordance with applicable regulations.³⁷ The procedure for canceling a local head (for example, the mayor or chief executive of a local council) in England varies depending on the jurisdiction and applicable regulations.

The following is a general procedure that can be applied in most cases: The first step is to collect sufficient evidence and detail the violations or reasons underlying the cancellation of the regional head. This may include legal violations, ethical violations, criminal acts, or behavior that is inconsistent with the duties of regional heads. Usually, complaints must be submitted by parties who have an interest or who feel affected by the regional head's actions.³⁸ Contact the authority responsible for the regional head. This could be a county council, city assembly, or other local government agency. Inform them of your complaint and the evidence you have. They will provide further guidance on the procedures to follow. Usually, complaints against regional heads need to be submitted officially in written form. You may need to complete a complaint form prescribed by the relevant authority and explain in detail the reasons for your proposed cancellation.

After receiving a complaint, the local authority will conduct an internal investigation or refer to established procedures. They will examine the evidence submitted and seek clarification from the regional head concerned. If the internal investigation does not produce an adequate decision or if the matter is very serious, the complaint may be referred to the relevant court or ethics board. This is

³⁷ Jonathan Tonge, Thomas Loughran, and Andrew Mycock, 'Voting Age Reform, Political Partisanship and Multi-Level Governance in the UK: The Party Politics of "Votes-at-16"', *Parliamentary Affairs*, 74.3 (2021), 522–41 <https://doi.org/10.1093/pa/gsab020>

³⁸ Benjamin E. Lauderdale and others, 'Model-Based Pre-Election Polling for National and Sub-National Outcomes in the US and UK', *International Journal of Forecasting*, 36.2 (2020), 399–413 <https://doi.org/10.1016/j.ijforecast.2019.05.012>

a more formal step involving legal proceedings or ethical proceedings that may include a trial or further investigation. Once the complaint process is complete, the responsible authority or body will make a decision. This decision may involve a vote by board members or a court. Regional heads can be canceled from their positions if the decision leads to such cancellation. A regional head is dismissed or canceled, there are procedures that must usually be followed to replace the regional head. This may include re-election or the installation of an interim regional head.

Legal Construction of Cancellation Victory Foreign Nationals in Local Democracy

Referring to the theory of certainty put forward by Roscoe Pound, legal certainty implies the existence of general rules that make individuals know what actions they can or cannot do³⁹. In line with Pound, Totsky stated that: legal certainty in the theoretical aspect is a set of requirements for the legal system in order to ensure a stable personal legal status by improving the process of law-making and enforcement. Legal certainty requires at adaptation of the individual behavior to the legal validity standards, protection from the State interference and individual confidence in the legal status reliability.

The regional head election systems in Indonesia and the UK have several similarities, although there are also significant differences. The following are some similarities in the regional head election systems in the two countries: first, general election in Indonesia and England, regional heads are elected through general elections. Eligible voters are given the opportunity to elect regional heads in their areas.⁴⁰ Second, democratic process in the regional head election process in both countries is based on democratic principles, meaning voters have the right to vote to elect the candidate of their choice⁴¹. Third, the independent candidates in Indonesia, independent candidates are allowed to run in regional head elections. In the UK, although candidates are usually from political parties, independent candidates are also allowed to run in some cases⁴². Fourth, elected regional head who are elected through general elections are appointed to office by the people and must represent the interests of the people who elected them.

While there are some similarities in the regional election systems in Indonesia and the UK, it is important to note that there are significant differences as well.

³⁹ Mhd Ansori, 'Penyelesaian Sengketa Pemilihan Umum Di Indonesia', *Wajah Hukum*, 3.1 (2019), 74 <https://doi.org/10.33087/wjh.v3i1.57>

⁴⁰ Agus Riwanto, 'The Construction of Law Neutrality of State Civil Apparatus in the Simultaneous Local Election in Indonesia', *Yuridika*, 34.2 (2019), 237 <https://doi.org/10.20473/ydk.v34i2.7926>

⁴¹ Suhartono Suhartono, Sahlan Sahlan, and Firzhal Arzhi Jiwantara, 'Demokrasi Berbiaya Tinggi Penyebab Korupsi Seakan Abadi', *Sentri: Jurnal Riset Ilmiah*, 2.6 (2023), 2372–80 <https://doi.org/10.55681/sentri.v2i6.1054>

⁴² Derek Hawes, 'Political Parties in the UK', *Journal of Contemporary European Studies*, 22.2 (2014), 211–12 <https://doi.org/10.1080/14782804.2014.923646>

Some differences include, first, election System: In Indonesia, regional head elections are carried out through direct elections with one round. In England, regional head election systems can vary depending on the local jurisdiction, and some regions may use a dual electoral system or ranking system (e.g. Supplementary Vote) to elect regional heads. Second, party system in England, political parties have a more dominant role in regional head elections. Meanwhile in Indonesia, although political parties also have influence, there are more independent candidates running in regional head elections⁴³. Third, autonomy structure Indonesia has a regional autonomy system that regulates government governance at lower regional levels. England, on the other hand, has a more centralized structure of autonomy, especially for regions within the UK. Fourth, candidate qualifications and requirements for becoming a regional head candidate may differ between the two countries, depending on local legal regulations. Thus, although there are some similarities in the regional head election systems in Indonesia and the UK, these differences reflect fundamental differences in government structure and governance in the two countries.⁴⁴

The election of regional heads (such as governors or mayors) in both the United Kingdom and Indonesia is conducted directly by the people. While Indonesia has 38 provinces, the UK has 50 states. Because the UK is a federated country, each state has a high degree of autonomy, including in the implementation of local elections, which are carried out with many variations between states. Each state is led by a governor. Like in Indonesia, governors in the UK are directly elected by citizens through elections⁴⁵. The federated states of the United Kingdom are mostly local government structures heavily influenced by the national model⁴⁶. In addition, national or local governments, and some other countries, such as Brazil and the Philippines, have followed the example of the United Kingdom to hold direct elections for local leaders. In some countries, a large number of local units elect their chief executives (mayors) directly through general elections.⁴⁷

⁴³ Edward Shepherd, 'Ideology and Institutional Change: The Case of the English National Planning Policy Framework', *Planning Theory & Practice*, 22.4 (2021), 519–36 <https://doi.org/10.1080/14649357.2021.1942528>

⁴⁴ Kevin Wallsten and Edward A Fogarty, 'Consolidation Nations: Public Attitudes, Electoral Institutions, and Fiscal Rules in the European Union', *Electoral Studies*, 87 (2024), 102731 <https://doi.org/https://doi.org/10.1016/j.electstud.2023.102731>

⁴⁵ Nicola Maaser and Martin Štrobl, 'School Performance and Retrospective Voting: Evidence from Local Elections in Denmark', *European Journal of Political Economy*, 2023, 102426 <https://doi.org/10.1016/j.ejpoleco.2023.102426>

⁴⁶ Nan D. Hunter, 'Our Constitutional Structure of Government', in *The Law of Emergencies* (Elsevier, 2018), pp. 3–17 <https://doi.org/10.1016/B978-0-12-804275-5.00001-2>

⁴⁷ Soeleman Djaiz Baranyanan, Nilam Firmandayu, and Ravi Danendra, 'The Compliance of Regional Autonomy with State Administrative Court Decisions', *Journal of Sustainable Development and Regulatory Issues*, 2.1 (2024), 35–52 <https://doi.org/https://doi.org/10.53955/jsderi.v2i1.25>

Furthermore, in both Indonesia and the United Kingdom, the role of political parties in the electoral process is very important. Both countries have a political party system where candidates are generally nominated by political parties.⁴⁸ In the UK, political parties have a strong role in elections and government, with two main parties dominating, the Democratic Party and the Republican Party. In Indonesia, the political party system is also important, but there are more diverse (multi-party) political parties that play a role in a wider spectrum of politics⁴⁹. However, differences such as the system of government, the number of levels of government, and the model of representation make the electoral systems of Indonesia and the United Kingdom uniquely dynamic.⁵⁰ A comparison of electoral systems in Indonesia and the United Kingdom reveals variations in approaches to achieving political representation. The electoral system chosen by a country is influenced by its history, culture, and political structure. Despite these differences, the ultimate goal of elections remains the same: giving citizens a voice to determine the direction of their government.⁵¹

Article 164 paragraph (4) of Law 10/2016 on *Pilkada* states "the elected regent and mayor candidate dies, is permanently unable, or resigns, the elected deputy regent and deputy mayor candidate will still be inaugurated as deputy regent and deputy mayor even though not in pairs". Cancellation of the inauguration of regional head candidates with foreign status can be qualified as a cancellation under the pretext of permanent disability. This means that a foreigner who wins the *Pilkada* cannot be inaugurated because the person concerned is permanently unable to be inaugurated as regional head.⁵²

In the context of the *Pilkada* of Sabu Rajia Regency, NTT, the inauguration stage can still be carried out even though only the candidate for the deputy head of the region is inaugurated while the candidate for the regional head is canceled. Indonesia has a different principle of citizenship from the United States. If the United States adheres to the principle of *multipatrident* citizenship or dual

⁴⁸ Kuswanto, 'Penyederhanaan Partai Politik Dalam Sistem Pemerintahan Presidensiil Yang Multi Partai', *Yuridika*, 28.2 (2013) <https://doi.org/10.20473/ydk.v28i2.1768>

⁴⁹ Alessandro Indelicato, Juan Carlos Martín, and Raffaele Scuderi, 'A Comparison of Attitudes towards Immigrants from the Perspective of the Political Party Vote', *Heliyon*, 9.3 (2023), e14089 <https://doi.org/10.1016/j.heliyon.2023.e14089>

⁵⁰ Nato Gugava, 'Constitutional Principles of Political Parties in Georgia', *JOURNAL 'ORBELIANI'*, 2022 <https://doi.org/10.52340/jo.2022.03.47>

⁵¹ Sandip Sarkar and Bharatee Bhusana Dash, 'On the Measurement of Electoral Volatility', *Mathematical Social Sciences*, 126 (2023), 119–28 <https://doi.org/https://doi.org/10.1016/j.mathsocsci.2023.10.005>

⁵² Tom W G van der Meer and Eefje H Steenvoorden, 'Going Back to the Well: A Panel Study into the Election Boost of Political Support among Electoral Winners and Losers', *Electoral Studies*, 55 (2018), 40–53 <https://doi.org/https://doi.org/10.1016/j.electstud.2018.06.007>

citizenship⁵³ Indonesia is a country that adheres to the principle of single citizenship. The principle of single citizenship that applies in Indonesia automatically also means that Indonesian citizens (WNI) who have dual citizenship status and or receive citizenship status from other countries have automatically lost their WNI status.

The annulment of a foreigner's victory in an election can also be done by the executive (State Administrative Official), this executive institution can erase or create a new legal situation⁵⁴. A new legal situation in the sense that this institution can create a new legal situation in the form of the elimination of Orient P. Riwu Kore's right to be inaugurated as Regent of Sabu Rajiai NTT. If the executive institution (State Administrative Official) is going to cancel, in this case, it must be the Ministry of Home Affairs (*Kemendagri*). The choice of the Ministry of Home Affairs is because the *Pilkada* implementation stage has entered the inauguration stage so it can no longer be charged to the *Pilkada* organizers (KPUD and Bawaslu). The Ministry of Home Affairs can be an institution that can cancel because the Ministry of Home Affairs is an institution whose scope of work includes government affairs including regional government affairs, especially those related to the inauguration of regional heads. Evidence that the Ministry of Home Affairs has the authority to inaugurate regional heads can be seen from the provisions of Article 164 paragraph (3) which states that "If the Governor and/or Deputy Governor cannot carry out the inauguration as referred to in the provisions of paragraph (1) and paragraph (2), the Minister of Home Affairs shall take over the authority of the Governor as the representative of the Central Government."

The cancellation of the inauguration by the Ministry of Home Affairs will certainly cause various challenges. Cancellation of the inauguration by the Ministry of Home Affairs will be considered that the Ministry of Home Affairs has taken legal action against the will of the people. This is because the winner of the *Pilkada* is a person directly elected by the people, so if the government does not inaugurate the person elected by the people, it is the same as the government against the will of the people and does not respect the implementation of popular sovereignty (*Pilkada*). However, the cancellation by the Ministry of Home Affairs is a form of the presence and responsibility of the State to ensure that no foreigners serve as regional heads. The cancellation by the Ministry of Home Affairs is a form of realization of the government's responsibility in protecting the sovereignty of the State, especially from foreign threats. The consequences of making foreign officials are the same as handing over the management of power and

⁵³ Peter J. Spiro, 'Book Review: Citizenship 2.0: Dual Nationality as a Global Asset', *International Migration Review*, 55.3 (2021) <https://doi.org/10.1177/0197918320931089>

⁵⁴ Bernat Panjaitan, 'Penyelesaian Sengketa Tata Usaha Negara (TUN) Pada Peradilan Tata Usaha Negara (PTUN)', *Jurnal Ilmiah Advokasi*, 3.2 (2015), 1-17 <https://doi.org/https://doi.org/10.36987/jiad.v3i2.361>

arrangements related to Indonesian citizens to foreigners. Of course, all Indonesian citizens do not want to be led and ruled by foreigners in their regions.⁵⁵

However, the cancellation of the inauguration by the Ministry of Home Affairs is certainly a form of cancellation that can be sued to the Court by Orient P. Riwu Kore as a foreigner who won the *Pilkada*. Cancellation by the Ministry of Home Affairs can be sued because the cancellation is included in the State Administrative Decision (KTUN) which is individual, final, causes legal consequences, and concrete so that it can fulfill the elements of a State Administrative Dispute (SKTUN). In the SKTUN settlement process at the State Administrative Court (PTUN), the validity of the decision to cancel the victory made by the Ministry of Home Affairs will be tested.⁵⁶

The State Administrative Court will examine the decree canceling the inauguration of foreign winners in terms of the authority of the Ministry of Home Affairs and the procedure for canceling the inauguration. In terms of authority, the PTUN will assess whether the Ministry of Home Affairs is an institution that has the right to cancel the inauguration of *Pilkada* winners or not. The assessment of authority is usually based on the provisions of laws and regulations governing the Ministry of Home Affairs, especially regulations that occupy the position of primary legislation.⁵⁷ The norms are found that legitimize the cancellation by the Ministry of Home Affairs, then automatically the decision of the Minister of Home Affairs regarding the cancellation of the inauguration of the regional head who won the *Pilkada* must be revoked. From the procedural aspect, the PTUN will assess whether the process of canceling the inauguration of foreigners is by applicable procedures. This means that the judicial process at the PTUN does not assess the substance of how the validity of foreigners as participants and winners of *Pilkada*. PTUN will only focus on the legality of the Decree of the Minister of Home Affairs.

Table 2: Choice of Legal Construction in Efforts to Cancel Foreigner Winners of *Pilkada*

| No | Optional Mechanism | Cancellation Object | Executing Institution |
|----|--|--|--------------------------|
| 1 | Cancellation through the Judicial System | Dispute over results | Constitutional Court |
| 2 | Cancellation by the Executive | The decision of a State Administrative Officer | Ministry of Home Affairs |

⁵⁵ Jana Belschner, 'Too Young to Win? Exploring the Sources of Age-Related Electoral Disadvantage', *Electoral Studies*, 88 (2024), 102748 <https://doi.org/https://doi.org/10.1016/j.electstud.2024.102748>

⁵⁶ Pippa Norris, 'The New Research Agenda Studying Electoral Integrity', *Electoral Studies*, 32.4 (2013), 563–75 <https://doi.org/https://doi.org/10.1016/j.electstud.2013.07.015>

⁵⁷ Reto Mitteregger, 'Socialized with "Old Cleavages" or "New Dimensions": An Age-Period-Cohort Analysis on Electoral Support in Western European Multiparty Systems (1949–2021)', *Electoral Studies*, 87 (2024), 102744 <https://doi.org/https://doi.org/10.1016/j.electstud.2024.102744>

The disqualification of a candidate pair has the potential to clash with democratic values if the candidate has won the contestation. As an effort to uphold democratic values, when this fact is found after the election, the elected Deputy Regional Head should be allowed to become an interim regional head until a definitive regional head is elected through the legislature at the regional level. The concept adopts succession in the United Kingdom when the elected Mayor Candidate turns out to be ineligible under the Constitution to be appointed as President.⁵⁸ Reflecting on the case in the United Kingdom, although there is no clear regulation on how to solve the problem when one of the candidates is found to be ineligible after the election, the solution applied in the United Kingdom is still based on the basic principles of democracy, namely maintaining the sovereignty of the people's voice, therefore disqualification is essentially the last alternative that is done⁵⁹. The solution is presented by Michael Nelson in his book *Guide to the Presidency* which states that the original constitution was silent as to what would happen if a person whom the electoral college had chosen to be president or vice president died, withdrew, or was found to be constitutionally unqualified by age, residence, or citizenship before being inaugurated.⁶⁰

This alternative solution is in line with the case that occurred in the United Kingdom Election, namely when the elected Presidential Candidate turns out to be unfit to become President, the cancellation of status is only for the Presidential Candidate, not the Vice Presidential Candidate. In that sense, the court's decision should still respect democratic values.⁶¹ In the case of elections, the author suggests that the legislators make limited changes to the Election Law, namely when there is a case where the candidate who wins the contestation does not meet the requirements as specified in the law (age, citizenship, health, political party support, criminal) then the elected deputy regional head candidate will replace the regional head. After that, the political party that supports the candidate is obliged

⁵⁸ Zeth Isaksson and Simon Gren, 'Political Expectations and Electoral Responses to Wind Farm Development in Sweden', *Energy Policy*, 186 (2024), 113984
<https://doi.org/https://doi.org/10.1016/j.enpol.2024.113984>

⁵⁹ Rodrigo Castro Cornejo and others, 'From Election Day to Presidential Approval: Partisanship and the Honeymoon Period in Mexico', *Electoral Studies*, 75 (2022), 102438
<https://doi.org/https://doi.org/10.1016/j.electstud.2022.102438>

⁶⁰ Christian Schnaudt, 'Sowing the Seeds of Skepticism? Electoral-Integrity Beliefs among Political Elites', *Electoral Studies*, 84 (2023), 102654
<https://doi.org/https://doi.org/10.1016/j.electstud.2023.102654>

⁶¹ Ricardo González and others, 'Fairness beyond the Ballot: A Comparative Analysis of Failures of Electoral Integrity, Perceptions of Electoral Fairness, and Attitudes towards Democracy across 18 Countries', *Electoral Studies*, 87 (2024), 102740
<https://doi.org/https://doi.org/10.1016/j.electstud.2023.102740>

to propose a new deputy regional head candidate who is elected through a plenary session of the DPRD.⁶²

4. Conclusion

The phenomenon of the emergence of regional election winners with foreign status has raised several facts and/or legal implications. Namely, the weakness of the regulation, the negligence of the organizers, the validity period of the dispute resolution of the limited nomination requirements, and the confusion to advance or continue at the inauguration stage. On the one hand, the inauguration is considered necessary because the victory of foreigners in the *Pilkada* is a legitimate product of the implementation of constitutional popular sovereignty. On the other hand, the inauguration cannot be carried out by a foreigner considering that the position of the regional head can only be occupied by Indonesian citizens. The choice of legal construction that can be taken in canceling the inauguration of foreign election winners can be pursued in two ways. Namely, through the judicial process at the Constitutional Court with the mechanism of disputing the results and also through the executive by issuing a decree (*beschikking*) by the Ministry of Home Affairs in the form of canceling the inauguration of foreigners as regional heads with the argument of permanent inability.

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⁶² Daniel Bochsler, Miriam Hänni, and Bernard Grofman, 'How Proportional Are Electoral Systems? A Universal Measure of Electoral Rules', *Electoral Studies*, 87 (2024), 102713 <https://doi.org/https://doi.org/10.1016/j.electstud.2023.102713>

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