

## **Independent Candidates of Regional-head election in Aceh**

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**Abstract:** Regional head election, as it is stipulated in Law No. 12 Year 2008 concerning Regional Government, has given an opportunity to independent candidates, and this is not contrary to the Indonesian constitution, 1945 Indonesian Constitution. This is also applied to Regional head election in Aceh through Law No. 11 Year 2006 concerning Government of Aceh. But in government of Aceh regulations, there is a regulation, Article 256, which states that an independent candidate is only for the first round election. According to the decree of the Constitutional Court No. 35/PUU-VIII/2010, Article 256 does not have binding legal force. Until MoU Helsinki was signed in Finland on August 15, 2005. One of the points in the MoU was a Law No.11 Year 2006 concerning Government of Aceh and on the representation of Aceh people. This law states about accommodating independent candidates in Regional head election in Aceh. But Article 256 of this law also states that the independent candidates are only for the first round election. The Constitutional Court then revoked Article 256 with the consideration that the case of independent candidates did not contradicted to MoU Helsinki and to the 1945 Indonesian Constitution. This would arouse friction in Regional head election Aceh in 2011.

**Keywords:** Regional head Election, Independent Candidate, MoU Helsinki.

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### **I. Introduction**

Democracy comes from the Demos-Cratos (people-power, government) also Demos-Cratein (folk-master, rule). Democracy is the government of the country where the power lies in the hands of a large number of people and the exercise of power in the interest of "everyone".<sup>1</sup> But, here began to appear also race for the position, emerging leaders fake, false leaders, who deceive the eyes of the people with false promises that the state will be chaotic and the emergence anarchis.

Democracy when it is associated with the Indonesian nation, of course, there are corridors that must be maintained, so as to implement democracy in the system of government, it is not contrary to the constitution is implemented in Indonesia, namely the 1945 Indonesian Constitution. One form of the creation of a democratic system of government is the existence of a general election, in terms of local governance, particularly for autonomous regions in Indonesia known as Regional Head elections (elections), which is implemented directly.

Regional Head elections (elections) in the context of Indonesia, as stipulated in Law No. 12 Year 2008 concerning Regional Government, has given room for independent candidates,<sup>2</sup> and it is not contrary to the constitution of Indonesia namely the 1945 Indonesian Constitution. Given space independent candidates also apply to the election in Aceh Province, through Law No. 11 Year 2006 concerning Government of Aceh.

Law No. 11 Year 2006 concerning Government of Aceh, arrange chapter accommodate about independent candidates in the election in Aceh province, namely in Article 67 (1).<sup>3</sup> However, the presence of another article concerning Article 67 (1) of this, especially in the transitional provisions of Law No. 11 Year

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<sup>1</sup> M. Solly Lubis, *Ilmu Negara*, Mandar Maju, Bandung, 2007, p. 59.

<sup>2</sup> Article 59 paragraph 1 point b, Law No. 12 Year 2008 concerning Regional Government, said that "Participants of general elections of regional head and deputy head of the region are: (b) pairs of independent candidates supported by a number of people".

<sup>3</sup> Article 67 (1), Law No. 11 Year 2006 concerning the Government of Aceh, which reads "pair candidate for Governor/Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor, as referred to in Article 65 (1) submitted by: a. A political party or coalition of political parties, b. Local political party or coalition of local political parties, c. Coalition of political parties and local political parties, or, d. individuals".

2006, namely in Article 256<sup>4</sup> of the mandated only for the first election, then it can be interpreted that be valid only one time only.<sup>5</sup>

Based on the contents of Article 256, it is determined that an independent candidate only for one time since the law No.11 Year 2006 concerning Government of Aceh, in this case only in the election of 2006 alone, since the election of 2006 was the election (election Head area) for the first time since the enactment of Law No.11 Year 2006 concerning Government of Aceh.

For the political elite, Article 256 which is the trigger of conflict, both for the local political elite in Aceh and that are outside of Aceh, also for the national political elite in Aceh and that are outside of Aceh. So that the friction in the regulation of elections in Aceh in 2011.

Initially in 2010, there are several parties who filed a judicial review to the Constitutional Court, in particular on Article 256, which tested the existing clauses in the 1945 Indonesian Constitution, including Article 18 paragraph (4)<sup>6</sup>, Article 27 paragraph (1)<sup>7</sup>, Article 28 D paragraph (1)<sup>8</sup>, Article 28 D paragraph (3)<sup>9</sup>, and Article 28 I paragraph (2)<sup>10</sup>.

Furthermore, the Constitutional Court by Judge panel, granted the request of the applicant, to repeal Article 256 of Law No. 11 Year 2006 concerning Government of Aceh, through the Constitutional Court Decision 35/PUU-VIII/2010, which was essentially repeal Article 256 of Law No. 11 Year 2006 concerning Government of Aceh, so that the repeal of Article 256, then automatically election in Aceh can be followed also by an independent candidate (individual), this verdict with some consideration of the Constitutional Court judges, such that Article 256 is no longer relevant to the state of democracy in Indonesia at this time, also compared with the Province of Papua Special Autonomy equally, that the election Papua province alone remain independent candidate, other considerations, that the results of the election 2006 in the province of Aceh majority of candidates who became Governor/Regent/Mayor is derived from independent candidates.

The beginning of the Constitutional Court Decision 35/PUU-VIII/2010, which then implies that the pros and cons in response to an independent candidate in the election of 2011, it affects the election of 2011, there have been four (4) times the delay of the election, which was originally will be scheduled in mid-October 2011, then postponed to be implemented in mid-November 2011, and then postponed again until December 24, 2011, but rescheduled again that on February 16, 2012, up to date, through the Constitutional Court No. 1/SKLN-X/2012 on the verdict ordered the execution of Aceh at the latest election on 9 April 2012, it is due to friction at the elite politics, so the tug can not be avoided in the interest of the Aceh election.

Responded to the decision of the Constitutional Court No. 35/PUU-VIII/2012, in this case the existence of the statement of the Aceh Party for not following the Aceh election either at the provincial level, as well as the District and the City,<sup>11</sup> with the argument, the Aceh Party considers the Constitutional Court has sought to undermine the sovereignty or political rights of the people Aceh that by tweaking one of the chapters that exist in Law No.11 Year 2006 concerning Government of Aceh, also this attitude as an attempt to rescue the Law No.11 Year 2006 concerning Government of Aceh which is a manifestation of the struggle of the people of

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<sup>4</sup> Article 256 of Law No. 11 Year 2006 concerning the Government of Aceh, which reads "*provisions regulating independent candidates in the election of Governor/Deputy Governor, Regent/Vice Regent, Mayor/Deputy Mayor referred to in Article 67 (1) d applies and only implemented for the first time since the election this law was enLawed*".

<sup>5</sup> In the Dutch language is called (Eenmalig), and in German is called (Einmalich).

<sup>6</sup> Article 18 paragraph (4) of the 1945 Indonesian Constitution, which reads "*Governors, Regents and Mayors each as Regional Head of the Provincial Government, District and Municipal elected democratically*".

<sup>7</sup> Article 27 paragraph (1) of the 1945 Indonesian Constitution, which reads "*All citizens are equal before the law and in government and spl abide the law and the government without exception*".

<sup>8</sup> Article 28 D paragraph (1) of the 1945 Indonesian Constitution, which states that "*Everyone has the right to recognition, security, protection, and legal certainty and equal treatment before the law*".

<sup>9</sup> Article 28 D paragraph (3) of the 1945 Indonesian Constitution, which states that "*Every citizen spl have equal opportunities in the government*".

<sup>10</sup> Article 28 I paragraph (2) of the 1945 Indonesian Constitution, which reads "*Everyone is entitled to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment*".

<sup>11</sup> Aceh Party, the majority party controls both at the provincial parliament also City and District, Aceh Party also has a political cadre in the government both at the provincial and district/municipality Regional Head elected at the General Election in 2006.

Aceh during 35 Years.<sup>12</sup> However, with the interim decision of the Constitutional Court No. 1/SKLN-X/2012 on January 16, 2012, the entire cadres Aceh Party expressed readiness to participate again in the election in Aceh, both at the provincial level, as well as the District and the City.<sup>13</sup>

On 2 November 2011 the existence of an intermediate decision of the Constitutional Court, the Constitutional Court's decision No.108/PHPU.D-IX/2011, there are several important points on the sidelines of the Constitutional Court's decision, including "ordered KIP reopen enrollment good candidate for Governor, Regents, and Mayor for 7 (seven) days, the Constitutional Court's interim decision, and equipment are stated registrant is allowed from the party / coalition of political parties (dependent), as well as independent candidates". Although through the interlocutory decision of the Constitutional Court has ordered the reopening of registration, but the Aceh Party remains with the original establishment, which is not going to follow the election, because they give space independent candidate.<sup>14</sup>

Constitutional Court leaving room for independent candidates in the election of Aceh as an independent candidate is not contrary to the constitution of the Republic of Indonesia, also MoU. Moreover, one of the basic considerations of the Constitutional Court, namely point 1.2.2 MoU which reads "the signing of this MoU, the people of Aceh will have the right to nominate candidates for the positions of all elected officials to contest the elections in Aceh in April 2006 and further", thus, according to the judges of the Constitutional Court, the permissibility of an independent candidate (individual), not at all contradictory to the content of the MoU, even greatly strengthen the content of the MoU in order to democratization.

Opinion of the judges of the Constitutional Court, specifically regarding the independent candidate (individual), it is not true that the opinion states that according to the Helsinki MoU independent candidates for all elections in Aceh Regional Head valid only 1 (one) time, because of point 1.2.2 memorandum understanding MoU was clear that independent candidate (individual candidates) is allowed and the presence of the phrase "...elections in Aceh in April 2006 and thereafter". Thus the right of the people of Aceh to select a running mate of independent candidates is given to elections in April 2006 and thereafter (there after), so it is not just for one time only, so the opinion of the judges of the Constitutional Court,<sup>15</sup> specifically regarding independent candidates in the final decision.

## **II. Formulation Of The Problem**

Based on the above exposure to the issues to be analyzed in this paper is First, Why appeared independent candidates in the election in the province of Aceh? Second, why there are those who reject the independent candidate in the election in Aceh Province in the Year 2011?

## **III. Research Methods**

This study is a normative law, the type of data used are secondary data, which consists of primary legal materials (various forms of legislation), consisting of secondary law (collection of data on the results of scientific work of scholars and research results are related to the position of an independent candidate in the election in Aceh Province), consisting of tertiary legal materials (materials that provide information about the primary legal materials and secondary legal materials, such as dictionaries and encyclopedias).

## **IV. Results and Discussion**

### **Independent Candidates On Election in Aceh Province**

The earthquake and tsunami that hit Aceh at the end of December 2004 seemed to force settlement of the conflict in Aceh. The memorandum of understanding (MoU) was signed almost one (1) Year after the massive disaster. In the early part of this agreement clearly stated that the MoU is part of the recovery efforts in Aceh.

In the framework of the implementation of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (MoU) signed in Helsinki Finland on August 15, 2005. President of the Republic of Indonesia on November 14, 2005, issued Presidential Decree No. 15 Year 2005 concerning the implementation of the Memorandum of Understanding Between the Government of the Republic of Indonesia and the Free Aceh Movement, one of mandate in this Instruction are instructed to the Governor of the Province of Nanggroe Aceh Darussalam, to prepare plans and policies on political participation that includes the formation of political parties based in Aceh and establishment local political

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<sup>12</sup> Aceh Party, "PA Tak Mendaftar", (Serambi Indonesia, Saturday October 8, 2011).

<sup>13</sup> Aceh Party, "PA Pastikan Mendaftar", (Serambi Indonesia, Wednesday January 18, 2012).

<sup>14</sup> Aceh Party, "PA Tetap tak Mendaftar", (Serambi Indonesia, Saturday November 5, 2011).

<sup>15</sup> Constitutional Court, "MK: Pilkada Lanjut", (Serambi Indonesia, Friday November 25, 2011).

parties in Aceh province. It was understood that the spirit of the governor instructed to constitute an attempt to restore the political rights of the people of Aceh with politics container legally.

On MoU does not explicitly explain the position of independent candidates in the election, however, the Memorandum of Understanding (MoU), the presence of regulating political participation of the people of Aceh in point 1.2. Where in this political participation, given the right for all the people of Aceh to determine the positions of all officers who will be selected to contest the elections in Aceh in April 2006 and thereafter,<sup>16</sup> as his original quote which reads: "Upon the signature of this MoU, the people of Aceh will have the right to nominate candidates for the position of all elected officials to contest the elections in Aceh in April 2006 and thereafter".

Memorandum of understanding (MoU) on the same occasion also confirmed that in addition to the people of Aceh have the right to determine all elected officials, as well as their assertion that all the people of Aceh will be guaranteed in accordance with the Constitution of Indonesia, particularly in local and national elections,<sup>17</sup> as well as the original quote reads: "Full participation of all Acehnese people in local and national elections will be guaranteed in accordance with the Constitution of the Republic of Indonesia".

This suggests that in addition to the rights of the people of Aceh in determining the positions of all elected officials, as well as lack of rights for the people of Aceh to participate, both in local and national elections, and in accordance with the Indonesian Constitution. Therefore, with the beginning of the MoU, the expected political rights of the people of Aceh can be recovered and in accordance with the Indonesian Constitution.

MoU was signed on 15 August 2005 has signaled a new flashback history of Aceh Province and the lives of its people towards a peaceful, just, prosperous, prosperous, and dignified. Things that should be understood that the memorandum of understanding is a form of reconciliation with dignity towards the development of social, economic, and political landscape in a sustainable manner, this will be the paradigm of Law No. 11 Year 2006 concerning Government of Aceh.

Post issuance of Law No.11 of 2006 concerning the Government of Aceh which is a representation of the MoU, there is something very essence of the enactment of this Act, the Regional Head elections of 2006, since the election which will be held this was the first election in Aceh, which uses the direct and give space independent candidates in the election.

It is interesting to understand that given space independent candidates in the election in Aceh Province, actually started in 2004 before the beginning of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (MoU), and also automatically prior to the issuance of Law No. 11 Year 2006 concerning Government of Aceh. This can be seen with the beginning Qanun 2 Year 2004 concerning the election of Governor/Deputy Governor, Regent/Vice Regent, Mayor/Deputy Mayor in Nanggroe Aceh Darussalam.

Given space to independent candidates in the election in Aceh province, expressly mandated by the Qanun.<sup>18</sup> However, the implementation of the election, as well give space independent candidates can not be implemented, which are caused by natural disasters (tsunami) in the end 2004, so it can only be implemented after the creation of the MoU Helsinki, as well as the issuance of Law No. 11 Year 2006 concerning Government of Aceh.

General Election in Aceh Province in 2006 was the first election after the peace or after the beginning of a Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (GAM) is called the MoU Helsinki, this election is also the first election after the earthquake and tsunami disaster in Aceh in 2004, moreover, this election was the first election in the province of Aceh are applying direct election, as well as to accommodate independent candidates.

General Election in Aceh which took place in 2006, recognize the existence of independent candidates, independent candidate (individual) is the candidate who will participate in the election, but without a formal legally supported by political parties. As stated in Article 67 paragraph 1 of Law No. 11 Year 2006 concerning Government of Aceh, that the pair candidate for Governor/Deputy Governor, Regent/Vice Regent, Mayor/Deputy Mayor may be filed by, among individual candidates (independent).<sup>19</sup>

Accommodate independent candidate in Law No. 11 Year 2006 concerning Government of Aceh, of course, this is in line with the spirit of the MoU, when the election process in Aceh in 2006, local political

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<sup>16</sup> Point 1.2.2, MoU Helsinki.

<sup>17</sup> Point 1.2.6, MoU Helsinki.

<sup>18</sup> Article 33 Paragraph 1 Qanun No. 2 Year 2004 concerning the election of Governor/Deputy Governor, Regent/Vice Regent, Mayor/Deputy Mayor in Nanggroe Aceh Darussalam.

<sup>19</sup> Article 67 Paragraph 1 Law No. 11 Year 2006 concerning Government of Aceh.

parties have not been born, this is due to the new local political party born after the PP 20 Year 2007 concerning Local Political Parties in Aceh which was passed on February 15, 2007<sup>20</sup>, which was followed by the establishment of the Aceh Party<sup>21</sup> on July 7, 2007.<sup>22</sup>

Interestingly, (just to describe) the election in Aceh in 2006 which also followed at all times independent candidates, specifically in this case the provincial election (Governor / Deputy Governor), was won by candidates ahead of the independent paths, namely: drh. Irwandi Yusuf, M.Sc and Muhammad Nazar, S.Ag., who received 768 745 votes (38.20% equivalent), of the number of votes for all candidates valid Governor and Deputy Governor, the 2.01237 million votes.<sup>23</sup>

Election held in Aceh on 11 December 2006, providing a spectacular and surprising facts with the accumulation of the number of votes won a pair Irwandi Yusuf - M. Nazar as Governor and Deputy Governor. Thus, the GAM is serious direct interests in the wheels of government in Aceh. Browse the history of elections in Aceh since 2006 to 2008, the opportunity has been successfully exploited perfectly by an independent candidate, which is a representation of GAM-SIRA that it was not yet formed a local party.

The victory of independent candidates in the election in Aceh in 2006, of course, has changed the political map in Aceh. And look Aceh has become the locomotive in the election, particularly in the application of independent candidates. Regional head election Aceh which is a forerunner to the beginning of an independent candidate, and this time the election in Indonesia also have to apply, as well as accommodate the existence of independent candidates. So if the election in Aceh, to further not apply and accommodate independent candidates, of course this would be a form of legal setbacks, especially in terms of democracy.

### **Friction Election in Aceh Province in 2011**

As the legal basis for the implementation of the election in the province of Aceh, Law No. 11 Year 2006 concerning Government of Aceh mandates that the Governor/Deputy Governor, Regent/Vice Regent, Mayor/Deputy Mayor elected as a pair directly by the people every five (5) Years through democratic elections, free, confidential and conducted honestly and fair.<sup>24</sup> As for what can be a pair candidate the Regional Head, may be filed by:<sup>25</sup>

1. A political party or coalition of political parties.
2. A local political party or coalition of local political parties.
3. Combined political parties and local political parties.
4. Individuals (specifically regarding independent candidates, there will be setting the amount of support from the community that is 3% (three percent), and dispersed well in the District / City, and in the district by 50% (fifty percent).<sup>26</sup>

Mandate Law No. 11 Year 2006 concerning Government of Aceh, specifically regarding the election, in addition to accommodating the independent candidates and local political parties. There is also a mandate of the election in Chapter XXXIX on Transitional Provisions, which in Article 256, which reads: "Conditions governing the independent candidate (individual) in the election of Governor / Deputy Governor, Regent / Deputy Regent, Mayor / Deputy Mayor referred to in Article 67 paragraph 1 letter d (independent candidate) applies and only implemented for the first time since the election of Law this law was enacted".

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<sup>20</sup> It can be seen, that the first election in 2006 of the birth of the local political parties in Aceh (elections held on December 11, 2006, while the new local political party born after the introduction of PP No. 20 Year 2007 on Local Political Parties in Aceh).

<sup>21</sup> According to the author's opinion, the Aceh Party is a representative for other local parties in Aceh, this is due to the Aceh Party cadres who have dominated both the Executive (the victory of an independent candidate in the 2006 elections), as well as in the Legislative (cadre victory in the 2009 legislative elections). Cakra Arbas, *Jalan Terjal Calon Independen Pada Pemilukada di Provinsi Aceh*, PT. Sofmedia, Jakarta, 2012, p. 96.

<sup>22</sup> Aneuk Agam Aceh, "Partai Aceh Pemenang Pemilu 2009", <http://aneukagamaceh.blogspot.com/2009/01/partai-aceh-pemenang-pemilu-2009-di-nad.html>, accessible on March 13, 2012.

<sup>23</sup> Wikipedia, "Pemilihan Kepala Daerah dan Wakil Kepala Daerah di Provinsi Nanggroe Aceh Darussalam", [http://id.wikipedia.org/wiki/Pemilihan\\_Kepala\\_Daerah\\_dan\\_Wakil\\_Kepala\\_Daerah\\_Provinsi\\_Nanggroe\\_Aceh\\_Darussalam\\_2006](http://id.wikipedia.org/wiki/Pemilihan_Kepala_Daerah_dan_Wakil_Kepala_Daerah_Provinsi_Nanggroe_Aceh_Darussalam_2006), accessible on March 13, 2012.

<sup>24</sup> Article 65 Paragraph 1 Law No. 11 Year 2006 concerning Government of Aceh.

<sup>25</sup> *Ibid.*, Article 67 Paragraph 1.

<sup>26</sup> *Ibid.*, Article 68.

Reviewing the mandate of Article 256, can be seen as normative, that the maker of the Law wants candidates Regional Head of independent paths only for the first election since the Law No. 11 Year 2006 concerning Government of Aceh was enacted. Therefore, the election of Aceh which was first held after the issuance of Law No. 11 Year 2006 concerning Government of Aceh is the election on 11 December 2006.

It also expressed by Tgk. Adnan Beuransyah,<sup>27</sup> about the philosophy of the beginning of Article 256, including the following:

"We have to remember the birth of an independent candidate in the background history of politics in Aceh. When ex-GAM wanted to move from field to politics in the war. When it is, the post-peace, no container for ex-GAM in order to participate in the election of the head of government of Aceh. And to accomplish this, so that people get a chance in the GAM political participation, the central government under the supervision of Parliament incorporate independent candidates so that GAM has access to it and the explanation of Law No. 11 Year 2006 concerning Government of Aceh in Article 256, stated that independent line just once.

Why is that? Because the existing approval for the establishment of local political parties, the existing political channels via the party to be able to be a candidate for governor or candidate Aceh government. The proof of birth Aceh Party (PA), SIRA, the Aceh People's Party (PRA), the Aceh Party Safe Seujahtera (PAAS) and Aceh Mandate Party (PDA). The fifth party is a local political party that can carry a candidate for governor candidates to compete in the election".

According to Jusuf Kalla,<sup>28</sup> meaning why independent candidates (individual) only apply once only in Aceh, this is due in 2007 will be established local political parties in Aceh, while in other areas there is no local political parties, also it is the mandate of the MoU . This is also confirmed by Karimun Usman,<sup>29</sup> that Article 256 is only set up the first independent candidate for election alone, due later in 2007 will set up a local political party.

Former chairman of the Special Committee (Committee) on the Draft Law on Governing Aceh (RUUPA) - House of Representatives, the Ferry Mursyidan Baldan,<sup>30</sup> said that at the time of drafting the Law on Governing Aceh, Article 256 in the context of legislation categorized as transitional clause. So enforced for independent candidates in Aceh only one that is at the General Election of 2006, and is no longer valid at the next General Election. The decision was, according to him, has become the choice of the people of Aceh when the early formulation of the draft Law on the Governing of Aceh until passed into Law No. 11 Year 2006 concerning Government of Aceh.

This suggests that in the process of Aceh election held for 2 (two) and so on, so as not to accommodate returning candidate Regional Head of independent paths, as defined by Article 256, which subsequently Article 256, through the decision of the Constitutional Court declared the provisions law that sleep (Slapende Regeling An Sich).

The occurrence of multiple interpretations of the Article 256 of Law No. 11 Year 2006 concerning Government of Aceh, this has implications for the election in Aceh Province in 2011. So the elections in Aceh Province in 2011 has undergone four (4) times the delay, in this case a new election in Aceh province can be held on 9th April 2012.

Various delays in the implementation of the election in the province of Aceh in 2011, can not be separated from their various Constitutional Court decisions, including:

1. Constitutional Court Decision 35/PUU-VIII/2010, that on December 28, 2010 the Constitutional Court repeal Article 256 of Law No. 11 Year 2006 concerning Government of Aceh as opposed to the 1945 Indonesian Constitution. The Constitutional Court judgment on Court Decision 35 / VII-PUU / 2010, including:<sup>31</sup>
  - a. That does not provide the opportunity for independent candidates in the elections contrary to the 1945 Indonesian Constitution, but by the Constitutional Court Decision No. 5/PUU-V/2007, dated July 23, 2007 is recognized and allowed individual candidates. In quo decision, the Court gave judgment that Article 256 of Law No. 11 Year 2006 concerning Government of Aceh may lead to violation of the rights of citizens

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<sup>27</sup> Tgk. Adnan Beuransyah, "Calon Independen Cukup Hadir Satu Kali", <http://www.Gemabaiturrahman.com/2010/04/calon-independen-cukup-hadir-satu-kali.html>, accessible on April 13, 2012.

<sup>28</sup> Jusuf Kalla, "MK Tak Paham Soal Aceh", <http://www.khansa-cp.com/news/237/Jusuf-Kalla-MK-Tak-Paham-Soal-Aceh>, accessible on April 13, 2012.

<sup>29</sup> Karimun Usman, (Harian Analisa, Wednesday August 24, 2011).

<sup>30</sup> Ferry Mursyidan Baldan, "Seuot-Sambot Article Independen", <http://www.Gemabaiturrahman.com/2010/04/seuot-sambot-Article-independen.html>, accessible on April 13, 2012.

<sup>31</sup> Point (3.13.6) Constitutional Court decision No. 005/PUU-V/2007.

who reside in the province of Aceh are actually guaranteed by Article 28D paragraph 1 and paragraph 4 of the 1945 Indonesian Constitution.

- b. That based on the decision quo, forming Act then accommodate independent candidates in the general election of Regional Head and Deputy Head (Election) to named Law No. 32 Year 2004 concerning Regional Government, namely by Law No. 12 Year 2008 concerning the Second Amendment Law No. 32 Year 2004 concerning Regional Government. Thus, independent candidates in the election legally valid throughout the territory of the Republic of Indonesia.
  - c. That if the Court's attention to the legal considerations in decision quo associated with a change in the applicable national law regarding individual candidates in the election, then the validity of the norms of Article 256 of Law quo becomes irrelevant. Moreover, if the article is still held by the Election Independent Election Commission (KIP Provincial / District / City) then it will cause unfair treatment to any Indonesian citizens who reside in the Province of Nangroe Aceh Darussalam, which will run through individual candidates, because the constitutional rights guaranteed by Article 28D paragraph 1 and paragraph 4 of the 1945 Indonesian Constitution be violated.
  - d. That the Court did not deny the existence of special autonomy in Aceh Province, but independent candidates in local elections and the deputy head of the region are not included in the distinction of Aceh Government,<sup>32</sup> especially the Law No. 32 of 2004 by Law No. 11 The Year 2006 can not be positioned in relation to the general law and special (vide Court Decision No. 5 / PUU-V / 2007 dated July 23, 2007). Other legal facts, Papua Province which is a special autonomous region, also impose independent candidates in the election.
2. Constitutional Court Decision No. 108/PHPU.D-IX/2011, that on 22 November 2011 the Constitutional Court essentially asserts that an independent candidate in the election is appropriate and not contrary to the 1945 Indonesian Constitution, and not also violate the clause 1.2.2 of the MoU Helsinki.<sup>33</sup>
  3. Constitutional Court Decision No. 1/SKLN-X/2012, that on January 27, 2012 the Constitutional Court upheld the interim decision dated January 16, 2012 which mandates to reopen the registration of the candidate pairs Governor/Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor to give an opportunity to would be candidates which have not signed up, both proposed by the political party, coalition of political parties, and individuals.<sup>34</sup>

## **V. Conclusions and suggestions**

Based on previous descriptions associated with the existing problems, the authors concluded as follows:

1. The legitimacy on an independent candidate in the general election in Aceh Regional Head, originally was mandated by Qanun No. 2 Year 2004 concerning the election of Governor/Deputy Governor, Regent/Vice Regent, Mayor/Deputy Mayor in Nangroe Aceh Darussalam. However, implementation of the election which accommodate new independent candidates can be carried out, after the beginning of a memorandum of understanding (MoU). In a memorandum of understanding (MoU), lack of regulation of the Aceh people's political participation in point 1.2.2. Where in this political participation, given the right for all the people of Aceh to determine the positions of all officers who will be selected to contest the elections in Aceh in April 2006 and thereafter (Upon the signature of this MoU, the people of Aceh will have the right to nominate candidates for the position of all elected officials to contest the elections in Aceh in April 2006 and thereafter). The next one, in the derivation of the Law No. 11 Year 2006 concerning Government of Aceh.
2. The existence of the group who refused accommodate independent candidate in the general election in Aceh Regional Head (2012). This is due to the differences in perceptions and opinions regarding the position of the independent candidates, as defined by the MoU, and the Law No. 11 Year 2006 concerning Government of Aceh, which subsequently Article 256 stated by the Constitutional Court has no binding legal force. Thus, the Independent Election Commission (KIP) as the organizer of the election in Aceh, still accommodate independent candidates, therefore refer KIP on legislation applicable. On the other hand,

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<sup>32</sup> According to Article 3 of Law No. 44 Year 1999 concerning the Special Status of the Province of Aceh which states: "*Article 3 (1) Features an Indonesian nation recognition given to the region because of the struggle and the essential values of the people who still maintained as the foundation turuntemurun spiritual, morality, and humanity; (2) Operation Features include: the organization of religious life, the organization of indigenous life, education, the role of scholars in the determination of regional policy*".

<sup>33</sup> Point (3.9.2) Constitutional Court decision No. 108/PHPU.D-IX/2011

<sup>34</sup> Constitutional Court decision upheld the intern No. 1/SKLN-X/2012, p. 9.

Aceh has become the locomotive for local democracy, would be very unfortunate if the Aceh should decline, the form does not accommodate independent candidates in the election of Aceh.

After a discussion and analysis of the issues that have been mentioned previously, the authors suggest are:

1. There needs to be a revision of Law No. 11 Year 2006 concerning Government of Aceh, at the same time accommodating the Constitutional Court decision, this is in line with the mandate of the MoU that the relevant judicial authority is the authority of the Government of the Republic of Indonesia. To be able to back purification, to mistake the interpretation of the Articles of the Act, in this case in particular regarding independent candidates, to avoid any disagreements or multiple interpretations.
2. Can be able the establishment of a legal norm in the implementation of elections, rule of law can be written in the form of legislation on Local Government, as well as legislation on the Governing of Aceh. So that when the head of terrain is derived from independent candidates, but the relationship between the Executive and the Legislature can work in harmony. The essence of the election is how when running the Regional Head of government, as well as the welfare of society.
3. Independent candidates not a specificity and privilege in the election in the province of Aceh, but also accommodated in the election in Indonesia. Should all stakeholders (executive and legislative), as well as the entire political elite interested in Aceh, can apply the wise and prudent, in the position of independent candidates in the election in Aceh province, so as to avoid conflicts, which in essence will only hurt the people of Aceh. And it is expected that the presence of independent candidates, it will increase the political participation of the people, so that the democratic climate can be run in accordance with nature. On the other hand, the independent candidate should also be able to provide political education in society.

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