

DIRECT ELECTION OF REGIONAL HEADS BY THE PEOPLE TO REALIZE THE WELFARE OF THE PEOPLE

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Abstract

The election of regional heads directly by the people in the regions has been running for 18 years, with the aim of running a democratic system and the main thing is the election of a regional head according to the expectations of the people in the area so that they can improve people's welfare. Since the enactment of Law Number 22 of 1999 to Law Number 23 of 2014 concerning Regional Government, Regional Heads have been given the authority to run a broad, real and responsible regional autonomy system. Over time, there are still problems that need to be corrected, with the issuance of laws governing regional head elections based on Law 23 of 2014 concerning Regional Government, specifically the election of regional heads as stated in Article 62 which then issued Perpu Number 1 2014 and stipulated by Law Number 1 of 2015, as a basis for holding regional head elections. A political party or coalition of political parties that nominates a regional head, as well as an individual candidate, at least one who has foresight with integrity, is dedicated to advancing the region and improving the standard of living of the people, in order to achieve social welfare.

Keywords: Regional Head Election, high integrity, and improving people's welfare.

PRELIMINARY

1.1. Background

The history of Indonesian constitutional history experienced rapid development after the 1998 reform, which was accompanied by amendments to the 1945 Constitution which at that time were considered sacred, including the amendment to Article 18 which regulates local government. So that it has an impact on the election of Regional Heads who are directly elected by the people.

Accommodating democracy which is the demand for regional heads to be directly elected by the people, Law Number 5 of 1974 concerning Principles of Governance in the Regions was replaced with Law Number 22 of 1999 concerning Regional Government and as a reflection of financial management a Law was issued Number 25 of 1999 concerning Financial Balance between the Central Government and Regional Governments.

To reflect Article 18 B of the 1945 Constitution, Law No. 22 of 1999 concerning Regional Government which was later replaced by Law Number 32 of 2004, and then replaced by Law Number 23 of 2014. Whereas Article 18 paragraph (4) of the 1945 Constitution states that Regional Heads are elected democratically. To fulfill this, a Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors was issued, followed by Law Number 1 of 2015 concerning regional head elections,

The election of regional heads has the meaning of implementing people's sovereignty to elect governors, regents and mayors directly and democratically, hakekat "elected democratically" in the provisions for regional head elections also takes into account the implementation of regional head elections in areas that are special and special, as referred to in Article 18 B paragraph (1) of the 1945 Constitution. This cannot be interpreted that direct regional head elections is the only way to interpret the phrase "elected democratically" contained in Article 18 paragraph (4) of the 1945 Constitution".

The direct election of regional heads is basically a nation's political process towards a more democratic, transparent and accountable life. In addition, the direct election of regional heads indicates a change in local democracy, namely not just the vertical distribution of power between levels of government.

Indonesia is a Unitary State, as stated in Article 1 paragraph (1) of the 1945 Constitution which states that Indonesia is a Unitary State in the form of a Republic. The Unitary State system adopted in Indonesia will have implications for the regional government system within the framework of the Unitary State of the Republic of Indonesia, which is specifically regulated in Article 18 of the 1945 Constitution, which regulates the position of provincial, district or city governments, and their authorities and administration. Article 18 paragraph (1) confirms that the Unitary State of the Republic of Indonesia is divided into provinces, regencies and cities. The meaning of the word "divided" indicates that the existence of provincial, regency and city governments is part of the Unitary State of the Republic of Indonesia.

In addition, provincial, district or city governments are given the authority to manage their own regional administration based on the principles of autonomy and assistance, so the division of authority must be based on statutory provisions. Thus

the authority of the regional government in carrying out its government activities remains within the framework of the system of the Unitary State of the Republic of Indonesia.

In the regional government structure, there are only two powers, namely government power (executive) and DPRD (legislative) power, these two powers synergize to jointly formulate financial policies as outlined in the APBD. The DPRD has a legislative function at the regional level, where the DPRD's position as a representative of the central government carrying out legislative functions is unavoidable, because DPRD elections are included in the general election regime, which aims to elect members of the DPR, DPD, DPRD and the President. In addition, the DPRD as a legislative body in the region can also be said to be an executive body that carries out legislative functions, bearing in mind that DPRD legislative products in the form of regional regulations are a type of statutory regulation that falls into the category of delegation regulations. According to Bagir Manan,¹ According to Moh. Fadli, the delegation regulation is not the name of the regulation, but a regulatory system or procedure that has the function of implementing regulations.²

In the description in the APBD, the regional head implements policies that lead to an annual program of activities to provide support to improve the standard of living of the community through various program activities that include 3 (three) program groups, namely the economy, infrastructure, measurable and structured socio-culture. DPRD has the role of supervising and evaluating the implementation of program activities carried out by regional heads.

To meet people's expectations, political parties, coalitions of political parties prepare regional head candidate pairs, or individuals as regional head candidates, who are deemed capable of improving the welfare of the community are registered or register prospective candidates at the KPUD in accordance with the requirements determined by law.³

Election contestants are required to follow all the processes involved in holding regional head elections, especially pairs of regional head candidates who have been determined and meet the requirements of the KPUD, so as not to violate laws and regulations.

1.2. Trouble Formula

In this research, the authors within the framework of the problem formulation raise a problem, namely a Regional Head Candidate who is Dedicated and Has Integrity to Improve People's Welfare. Where political parties who have the right to nominate a regional head candidate do not only come from within their party members, but choose someone outside their party, especially someone who can be trusted to be able to run the government system and the autonomy system.

¹Bagir Mana in Moh. Fadli, 2011 Delegation Regulations in Indonesia, Malang.

²Ibid.

³Article 1 point 3 and 4 of Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 1 of 2015 concerning Government Regulations in lieu of Law Number 1 of 2014 concerning Regional Head Elections.

With the expertise of regional heads who can improve the welfare of the people in their regions, it will have an impact on the utilization and improvement of resources in the regions, which will then increase Local Own Revenue (PAD), while most Regional Heads emphasize income and revenue sourced from the APBN, the weakness micro and macro investment growth.

RESEARCH METHOD

The research method in writing this scientific paper, the author uses the normative legal research method which is based on the study of juridical analysis in various laws related to regional head elections, theoretical literature and then related to the problem, then used as the subject of discussion. According to Soerjono Soekanto, normative legal research is also referred to as library research, because normative legal research is carried out by examining library materials or secondary data, also includes research on legal principles, research on vertical and horizontal synchronization levels, legal comparisons and legal history.⁴

The research approach uses statutory, conceptual, factual approaches. The statutory approach is carried out by examining the laws and regulations related to the issue of regional head elections. While the conceptual approach is carried out if there is no legal rule for the problem at hand.

DISCUSSION

3.1. Regional Head Nomination by Political Parties

In the 1945 Constitution it has been emphasized that the State of Indonesia is a State of Law. According to Jimly Asshiddiqie, outlining the Affirmation that Indonesia is a constitutional state which has so far been regulated in the Elucidation of the 1945 Constitution, the Amendments to the 1945 Constitution have been elevated to the 1945 Constitution Article 1 paragraph (3) reads as follows: "Indonesia is a constitutional state." The consequence of this provision is that every attitude, policy, and behavior of the state apparatus and the population must be based on and in accordance with the law. In fact, this provision is intended to prevent arbitrariness and arrogance of power, both by state apparatus and by the population.

In a constitutional state, it is the law that holds the highest command in the administration of the state. In fact, what takes the lead in administering the state is the law itself, in accordance with the principle of "the Rule of Law, And not of Man", which is in line with the notion of "nomocratie", namely power exercised by law, "nomos".⁵

Such a system of rule of law, that law is built and enforced according to democratic principles, with the principles of rule of law and rule of law. Therefore, the principle of rule of law should be built and developed according to the principles of democracy or people's sovereignty (democratische rechtsstaat). So the law may

⁴Soerjono Soekanto, *The Function of Law in Society*, Bandung, Alumni, 1981,

⁵Jimly Asshiddiqie, *Indonesian Constitution and Constitutionalism, Cooperation between the Constitutional Court and the Center for Constitutional Law Studies* (Jakarta, FH-UI, 2004) p. 56

not be made, enacted, interpreted and determined with an iron fist based on mere power (*machtsstaat*).

The principle of a rule of law cannot be upheld by ignoring the democratic principles upheld by the Constitution, therefore it is also necessary to emphasize that sovereignty is in the hands of the people which is enforced according to the Constitution (constitutional democracy) which is balanced with the affirmation that Indonesia is a state of law. people's sovereignty or democracy (*demokratische rechtsstaat*).

It is commonly understood that the 1945 Constitution adheres to the teachings of people's sovereignty, as emphasized in the formulation of Article 1 paragraph (2) of the 1945 Constitution, is a direct elaboration of the notion of people's sovereignty which is expressly stated in the Preamble to the 1945 Constitution, paragraph IV. Changes in the substance of the article diverted the Indonesian state from the MPR system to a people's sovereignty system. Then it is used as the main reference in exercising people's sovereignty, the implementation of people's sovereignty is handed over to bodies/institutions whose existence, authority, duties and functions and which parts are handed over to the people through elections.

One of the fundamental changes in the 1945 Constitution was regarding the election of regional heads, as emphasized in Article 18 paragraph (4) of the 1945 Constitution which stated that "Governors, Regents and Mayors, as heads of provincial, regency and city regional administrations, are elected democratically". Democracy in government requires the rule of law to be upheld, because in democracy that government is from the people, by the people and for the people and the law is desired to protect the people, guarantee the holding of regional head elections regularly every five years and guarantee the process, mechanism, quality of organizing head elections area directly, publicly, freely and confidentially as well as honestly and fairly.

According to Agussalim Andi Gadjong, the hallmark of constitutional democracy is that the idea of a democratic government is a government that has limited powers and is not justified in acting arbitrarily against its citizens. Limitations on government powers are listed in the constitution. The affirmation of the State of Indonesia as a democratic country (people's sovereignty) is stated in Article 1 paragraph (2) which reads that sovereignty is in the hands of the people and implemented according to the Constitution. The implementation of this people's sovereignty is the holding of general elections.⁶

In accordance with the development in the implementation of regional head elections Article 18 of the 1945 Constitution as a guideline that is used as a basis or source of law both in a material and formal sense, because as a source of law in a material sense it provides substantial support for the existence of regional head elections, and the values that are philosophically and sociologically charged, including in historical, economic, cultural, political aspects, and as a source of law in a formal sense is a systematic container for concretizing the values contained

⁶Agussalim Andi Gadjong, *Regional Government Political and Legal Studies* (Bogor, Ghalia Indonesia, 2007) p. 36

therein, meaning that concretization transforms values that are still abstract into tangible norms so that they can be used as guidelines in regional head elections.

The holding of regional head elections as a form of implementation of regional autonomy, that regional autonomy is held is not just a reality of a country that has a large area and a large population. However, regional autonomy is the basis for the implementation of democracy and an instrument in the context of realizing the prosperity and welfare of the people, and constitutes a unified territory of the Unitary State of the Republic of Indonesia.

The wave of democracy accompanied by changes in the political system in the reform era, increasingly shows the strong desire for regional head elections to no longer be elected by the Regional People's Representative Council (DPRD), based on the principle of popular sovereignty, regional head elections are directly elected by the people according to the meaning of democracy. The people are given the power to elect leaders in the regions according to their wishes, in order to advance the region and improve the welfare of the people in the regions.

Autonomy given to provinces, districts and cities as an implementation of the delegation of responsibility from the central government to regional governments, in principle, in this autonomy there are 2 (two) things, namely on the one hand the rights and authorities in implementing autonomy, and on the other hand the responsibilities in the administration of autonomy. Article 18 of the 1945 Constitution is a strong basis for the implementation of autonomy by giving broad, real and responsible authority to the regions, and as a strong foundation for holding regional head elections.

In the framework of regional autonomy, an effective combination is needed between a clear vision and good leadership, with the freedom to initiate and be creative from regional leaders who are adapted to the vision of regional autonomy which is formulated in 3 (three) spheres of interaction, namely politics, economics, social and culture. If viewed from a political point of view that regional autonomy is the fruit of decentralization and democratization policies, it must be understood as a process to open up space for the birth of democratically elected regional governments, enabling the administration of government that is responsive to the interests of the people in the regions and maintains a decision-making mechanism. decisions that adhere to the principles of public accountability and transparent democratization of government.

One of the major currents of the reform era was the decentralization of state administration which gave rise to the strengthening of regional autonomy. The centralization and uniformity of local government in the past was part of authoritarianism which suppressed regional diversity and potential. Through the strengthening of regional autonomy, it is hoped that the welfare of the community and the progress of the regions will increase, so that it can reduce the gap between the center and the regions and can increase funds to develop the various potentials that each region has.

The implementation of regional autonomy as part of the reform era places the regional head as having an important role in running regional government, who is positioned as the head of government in the region with considerable power to make

changes and increase regional progress, people's welfare. However, it still has obedience to the central government.

During the reform era, there was also a change in policy in terms of regional head elections. Originally, regional head elections were carried out by the DPRD, which later, in line with the development of government politics and the development of democracy, regional heads and deputy regional heads were elected directly by the people. These constitutional changes are intended to achieve the goal of regional autonomy that is in favor of the people, not only prioritizing the interests of the political elite, but also prioritizing the interests of regional development and people's welfare.

One of the characteristics of a unitary state according to Sri Sumantri can be seen in the issue of its authority, Sri Sumantri stated that this central government has full control over the territory of the country. Even though the territory of the country is divided into parts of the country, these parts of the country do not have original power. This means that what is contained in the parts of the country above is not something original. The authority that exists in various parts of the country which are called autonomous regions is obtained from the Central Government.⁷

Thus democracy is the government of the people, which is then interpreted as a government of the people by the people and for the people. In its development, the notion of democracy in principle has not changed, namely a system of government in which the people hold or at least the people are included in the discussion of government issues.

Autonomy is basically a political concept, according to Koesoemahatmadja and Miftah Thoha⁸. Some notions of autonomy are always associated with or equated with freedom and independence, something is considered autonomous, if it can determine itself to make its own laws, regulate itself, and operate based on its own authority, power and initiative.

In the current era, the concept of people's sovereignty gets the main place and is related to local government, in this case regional autonomy, the teachings of people's sovereignty have a big influence. With regional autonomy, there is a kind of division of power by decentralizing authority which has so far been centralized in the central government, there has been a shift in power from the center to the regions.

The implementation of regional autonomy is an effort to realize democratization, where people's aspirations and interests in each region can be properly accommodated. In the context of democratization and autonomous regional government is a regional government whose government leaders are elected by local residents and have the authority to regulate and manage their own affairs based on laws and regulations, still recognizing the supremacy of law and national sovereignty.

In line with developments, Law No. 23 of 2014 which regulates the regional head election system, as stipulated in Article 62, subsequently issued a Government

⁷Sri Sumantri, *Introduction to Comparison Between Constitutional Law* (Jakarta, Rajawali, 1981) p. 52

⁸DRH. Koesoemahatmadja, *Introduction to the Local Government System in Indonesia* (Jakarta, Bina Cipta, 1979) p. 12

Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors, then stipulated Law of the Republic of Indonesia Number 1 of 2015 concerning Establishment of Regulations Government in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become Law, then Law Number 8 of 2015 Amendments to Law of the Republic of Indonesia Number 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Election of Governors was issued. , Regents and Mayors become Laws, to adjust to the conditions issued by Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become Laws. Due to the Covid-19 outbreak, Law Number 6 of 2020 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2020 regarding the Third Amendment to the Republic of Indonesia Law Number 1 of 2015 regarding the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 regarding the Election of Governors and Regents was issued. and the mayor becomes law. Regents and Mayors become laws. Due to the Covid-19 outbreak, Law Number 6 of 2020 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2020 regarding the Third Amendment to the Republic of Indonesia Law Number 1 of 2015 regarding the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 regarding the Election of Governors and Regents was issued. and the mayor becomes law.

Amendments to the laws governing the election of regional heads are solely to adjust the existing conditions in the course of democracy in regional head elections, to achieve good and responsible governance that includes the people, as the holders of sovereignty.

Political euphoria and reforms where the democratic system is returned to the sovereignty of the people, direct involvement of the people, with the enactment of Law No. 23 of 2014 concerning Regional Government, there has been a significant change in the democratic process in the regions whereby regional heads and regional representatives are elected in one candidate pair which is carried out democratically based on the principles of direct, general, free, secret, honest and fair ".

Candidates for regional heads can be proposed by political parties or coalitions of political parties and can also come from individual candidates. Each candidate must fulfill the provisions in the legislation governing the nomination of a person to become a candidate for regional head.

In the election of regional heads directly by the people and democratically, it is necessary to elaborate further, because the positions of regional heads such as governors, regents and mayors are different. The Governor is an extension of the

President and not the direct supervisor of the Regents and Mayors. While Regents and Mayors are government leaders in the regions who are directly related to the community.

The meaning contained in Law Number. 23 of 2014 concerning Regional Government is in the context of realizing the mandate of the 1945 Constitution in the administration of regional government which is directed at being able to produce effective regional leadership, taking into account the principles of democracy, equal rights, justice and legal certainty in the system of the Unitary State of the Republic of Indonesia.

To fulfill the nomination of regional heads, where political parties prepare a candidate who meets general and specific requirements, then the KPU which is responsible for organizing regional head elections provides guidelines as guidelines in the regional head election process, namely:

1. Regional Head Nomination Requirements and Mechanisms

Every citizen has the right to become a candidate for regional head which is divided into 2 (two) categories as referred to in Article 5 paragraph (1) Elections are held in 2 (two) stages, namely the preparation stage and the implementation stage. In paragraph (3) the implementation stage includes:

- a. registration of Governor Candidates, Regent Candidates, and Mayor Candidates;
- b. public test;
- c. announcement of the registration of Governor Candidates, Regent Candidates, and Mayor Candidates;
- d. registration of Candidates for Governor, Candidate for Regent, and Candidate for Mayor;
- e. examine the requirements for Candidates for Governor, Candidate for Regent, and Candidate for Mayor;
- f. determination of Candidates for Governor, Candidate for Regent, and Candidate for Mayor;
- g. campaign implementation;
- h. voting implementation;
- i. vote counting and vote counting results recapitulation;
- j. determination of the elected candidate;
- k. settlement of violations and disputes over election results; and
- l. proposal for approval of the appointment of the elected candidate.

In this process what the community should pay attention to is the public test, because in the public test it is a space for the community to provide an assessment of the personality of the candidate for regional head whether he has ever committed an act that is disgraceful or not.

However, according to AM Saefuddin,⁹ What needs to be watched out for is funding for independent candidates. Because it is possible that it will give birth to several problems: First, one of the funding for independent candidates can come from non-political organizations. This can be used by independent candidates who can come from political adventurers who have failed to compete in the party.

⁹ AM Saefuddin, "Ferivifying Partners to Track Individual Candidates", Jawa Pos Daily, published date 23 May 2011

Second, the existence of independent candidates backed up by black conglomerates. By providing support to independent candidates, they will obtain free legal status and return to business activities. Even though we know that black conglomerates are the real enemy of the state.

In Law Number 23 of 2014 concerning Regional Government, the position of the Provincial and Regency/City General Election Commission is positioned separately from the Central General Election Commission as its parent.

According to Mukthie Fajar¹⁰ Legislators depart from the paradigm that direct regional elections are the affairs of regional administration, so that they are included in the legal regime of local government and have nothing to do with general elections (elections) and the legal regime of elections according to Article 22E of the 1945 Constitution of the Republic of Indonesia, even though they do not hesitate to adopted the principles of election law, and even borrowed election officials, namely the Provincial KPU and Regency/Municipal KPU which are officials and an integral part of the KPU by being given KPUD clothes (so they are separated from the KPU) and their spirit of independence is reduced (among other things, having to be responsible responsible to the DPRD), for direct regional election organizers.

The authority given to the General Election Commission is not only to plan, carry out and control the holding of regional head elections, but also to compile all procedures related to the preparatory and implementation stages based on government regulations. However, the granting of special authority to the General Election Commission is in no way connected with the Central General Election Commission as the parent of the KPUD.

The General Election Commission must be independent or independent, must also be neutral, must not take sides and be free from the influence of any party. The General Election Commission may not be controlled by political parties or the interests of regional head election participants.

2. The idea of direct election of regional heads

The idea of direct regional head elections emerged basically as a follow-up process from a strong desire to improve the quality of democracy in the regions that were being initiated. The direct election of regional heads is expected to produce leaders who are credible and supported by the people. It is also hoped that direct election of regional heads can become an instrument for changing political leadership, where the best people in the regions can appear. New people who are cleaner and more honest will be born. This common goal is none other than to be able to realize the essential rights of individuals, the emergence of moral autonomy and in the end give birth to prosperity and well-being for all its citizens.

The emergence of attention to the democratic transition in the regions departs from a belief that the existence of democracy in the regions is a prerequisite for the emergence of democracy at the national level. This functional view departs from the assumption that when there is an improvement in the quality of democracy at the national level. Based on the studies the authors put forward 4 reasons for this:

¹⁰ Mukthie Fadjar in M. Guntur Hamzah, "An Analysis of the Constitutional Court's Decision on the Case of Reviewing Law No. 32 of 2004 concerning Regional Government Against the Constitution", Paper, Komda South Sulawesi.

First, Democratic governance in the regions is an arena for political education that is relevant for citizens in a democratic society (free societies). Second, local government is seen as controlling for excessive central government behavior and anti-democratic tendencies in a centralized government. Such tendencies especially occur during the transition period from authoritarian government to democratic government. In this transition local governments have a higher bargaining position over the power and authority of the central government. Third, democracy in the regions is considered capable of presenting a better quality of participation than at the national level. The fact that the communities in the regions are relatively limited and the people know each other better is considered as the basis for the argument that community participation in the regions is more meaningful when compared to that at the national level. Community political participation in the regions makes it possible for deliberative democracy, that is, there is more direct communication in democracy. Fourth, the emergence of the idea of direct regional head elections is basically a continuation of the strong desire to improve the quality of democracy in the regions.

Besides that, to avoid the appearance of tyranny, democracy also aims to achieve other goals. Among them are the realization of individual essential rights, the existence of political equality, the emergence of moral autonomy, the opportunity to determine the position of the individual, and the welfare. In such a context, it is hoped that the emergence of democratization in the regions through direct regional head elections is expected not only to lead to the freedom of the people in the regions to determine their own leaders. The process is expected to give birth to the prosperity and welfare of the people in the region.

Local government has the potential to achieve democratization because the decentralization process requires greater levels of responsiveness, representation and accountability. In relation to elections at the local level. The realization of democratic regional government is the dream of all nations, including Indonesia. However, this effort will encounter an unclear problem regarding universal benchmarks for assessing whether a regional government can be categorized as a democratic government or not. The existence of local government as a consequence of adopting the concept of democracy (populist) so that the government that is formed is a people-sovereign government.

Democracy is not an autonomous phenomenon that is independent from other phenomena. It can even be said that the rise and fall of democracy at certain times is influenced by various external phenomena in the form of ideology, politics, economics, social, culture and so on. These various factors will influence various basic ideas about democracy, democratic mechanisms and others which in turn will give birth to various styles of democracy with various predicates placed on them.¹¹

Share Mana¹², stated that the presence of democracy is not only measured by the existence of democratic institutions, such as the existence of representative bodies, elections are not a guarantee of the presence of democracy. Democracy is not just an institution or institution. Democracy is also a mechanism, it would not

¹¹Gede Pantja Astawa, *Legal Problems of Regional Autonomy in Indonesia*, (Bandung: Alumni, 2008), p. 67

¹² Share Manan, *Welcoming the Dawn of Regional Autonomy*, (Yogyakarta, PSH Faculty of Law UII, 2001), p. 64

even be an exaggeration to mention it, a democratic mechanism is a determinant for measuring the presence of real democracy, both in the life of the state or government and in the life of society in general. Culturally democracy will thrive if it is supported by democratic behavior such as readiness to differ opinions, readiness to lose, readiness to compete fairly, peaceful attitude and so on.

The background to the direct election of regional heads includes:

First, that the highest leadership of the country (President) has been directly elected by the people in elections which were conducted for the first time through the 2004 elections, while the lowest regional leaders (Village Heads) are also directly elected, thus there is no reason for the election of governors, mayors and regents to be carried out directly. directly by the people.

Second, regional head elections will further realize the sovereignty in the hands of the people, as stipulated in Article 1 paragraph (2) of the 1945 Constitution, that sovereignty is in the hands of the people and implemented according to the Constitution.

Third, juridically, Law No. 22 of 1999 which stipulates that regional heads are elected by the DPRD is no longer appropriate because the law on the Composition and Position of the MPR, DPR, DPD and DPRD (UU No. 22 of 2003 which wants regional head elections to be carried out directly by the people)¹³

Thinking about the regional head election mechanism strategy that refers to the cost efficiency of implementing regional head elections, the authors will describe below:

First, Regional Head Elections are not in one unit with General Elections, Regional Head Elections are carried out separately from the presidential elections for the DPR, DPD, provincial, district and city DPRD.

Second, voter turn-out in the holding of regional head elections is lower than voter turnout during presidential, DPR, DPD, provincial DPRD and city/regency DPRD elections,

It is time for us to rearrange regional head elections, this arrangement is carried out in two policy options:

- a. holding regional head elections in one package with general elections for provincial DPRD, regency/city DPRD. This first option can be classified as a local election, because this option takes place regional head elections and general elections for Provincial DPRD and Regency/Municipal DPRD which all take place at the local level. On the other hand, there is the national general election which is a package for holding presidential and vice-presidential elections combined with general elections for the DPR and DPD. It can be projected that both local and national general elections will be held with an interval of 6 (six) months so as to enable the central KPU and provincial, regency/city KPU to have sufficient time to prepare from one general election to the next. next.
- b. the grouping of general elections at two levels, namely the executive general election in which the presidential and vice-presidential election is combined with the general election of regional heads, both provincial and district/city. On the

¹³ Catur Wido Haruni, "Responsibility of Regional Heads in Administrative Administration After Direct Regional Head Elections", (Journal of the Constitution, Vol II, No. 1, month June 2009), p. 89

other hand, there are general elections for the legislature, namely general elections for members of the DPR, DPD and Provincial and Regency/Municipal DPRD which are also held concurrently.

Both of these policy options certainly have problems that must be resolved before they are agreed to be selected as policies by both the government and the DPR. One of the obstacles is the need for a political decision whether to hold general elections for regional heads before their term of office expires or to appoint executors who will fill the positions of governors/regents/mayors whose term of office has expired.

To implement this optional policy, it is necessary to immediately compile a blue-print for the policy of holding regional head general elections which is complemented by rescheduling the time for holding regional head general elections with a main message, namely that rescheduling regional head elections is intended to bring about general elections. efficient regional heads and encourage increased public participation with better quality administration.

Lukman Hakim Saifuddin,¹⁴ implementation of regional autonomy can indeed be asymmetrical. He gave an example, the Pilkada system between regions does not have to be the same. For regions that have good education and social welfare and are ready to be democratic in a polite manner, direct local elections can be held. On the other hand, for regions whose people are not ready to practice direct regional elections, a representative mechanism can be adopted through the DPRD. Lukman added that there are also regions such as Yogyakarta which because of their specificity cannot be 'forced' to hold direct gubernatorial elections at any time. So, please each region to determine the election system in accordance with their respective regions.

Lukman said that the Ministry of Home Affairs is currently studying the possibility of returning the Pilgub to the DPRD. According to Lukman, maybe this concept can be applied to certain areas. However, it does not apply to all regions. It is precisely with this system that diversity is accommodated in our democracy.

Regarding the regional election mechanism, Lukman suggested that it be up to each region to regulate it through a regional regulation. In formulating these regional regulations, the DPRD and regional heads must involve traditional leaders and the wider community, so that the election system represents the will of the majority of the people in the area.

3. Democratic Regional Head Elections

According to Sukarna explained that "The focus point of democracy is on people's power. This is understandable, considering that power is inherent in people to regulate and defend themselves. Remembering that the people themselves are from a collection of people who are aware of joining in order to organize and defend their interests, the power that exists in these people is united, so that people's power arises. Thus the power was not to protect some of the people and rape them but to protect and defend all the people, so that their lives become safe, orderly, just, prosperous and independent."¹⁵

¹⁴ Lukman Hakim Saifuddin, the government is advised not to make regional elections uniform, with the address: <http://www.MPR.go.id> accessed on 21 April 2013

¹⁵ Sukarna, *Political System* (Bandung, Alumni, 1981) p. 37

Therefore, in democracy, we want or demand accountability from those who govern for those who are governed, so the government and those who are governed in democracy are the same, the difference is their function, namely that the government has the function to regulate and those who are governed have the function to be regulated. Then democracy means government by people who are freely elected and are responsible for those who are governed.

Meanwhile, according to Kancil explained "This last interpretation is no longer original, because democracy is defined as the implementation of more voices from the people at large, so it does not carry out the wishes of all the people, in this case democracy can be misused by larger groups in a country to gain influence in the government of the country, by always defeating the will of groups that are smaller in number of members. In a genuine democracy, the rights of every person in a country are guaranteed. The general understanding at the present time is that democracy is defined as a ratio of "half + one", so which group has obtained at least "half + one vote", then this group will win over the other groups. This method is considered based on democracy.¹⁶

According to the author, the transition to democracy in the regions departs from a belief that the existence of democracy in the regions is a prerequisite for the emergence of democracy at the national level. This functional view departs from the assumption that when there is an improvement in the quality of democracy at the national level. Based on studies that have been conducted by a number of experts, 4 (four) reasons can be put forward for this:

First, Democratic governance in the regions is an arena for political education that is relevant for citizens in a democratic society (free societies).

Second, local government is seen as a controller for the excessive behavior of the central government and anti-democratic tendencies in a centralized government. Such tendencies especially occur during the transition period from authoritarian government to democratic government. In this transition local governments have a higher bargaining position over the power and authority of the central government. Besides avoiding the emergence of tyranny, democracy also aims to achieve other goals. In this context, the emergence of democratization in the regions through the election of regional heads by the people in the regions, it is hoped that there will be freedom for the people in the regions to determine their own leaders. It is hoped that this process will give birth to the prosperity and welfare of the people in the region.

Third, Democracy in the regions is considered capable of presenting a better quality of participation than at the national level. The fact that the communities in the regions are relatively limited and the people know each other better is considered as the basis for the argument that people's participation in the regions is more meaningful when compared to that at the national level. People's political participation in the regions makes it possible for deliberative democracy to exist, that is, there is more direct communication within democracy.

Fourth, the emergence of the idea of direct regional head elections is basically a process of a strong desire to improve the quality of democracy in the regions.

¹⁶ Kancil, Constitutional Law of the Republic of Indonesia (Jakarta, PT Rineka Cipta, 2008) p. 90

Democracy is not an autonomous phenomenon that is independent from other phenomena. It can even be said that the rise and fall of democracy at certain times is influenced by various external phenomena in the form of ideology, politics, economics, social, culture and so on. These various factors will influence various basic ideas about democracy, democratic mechanisms and others which in turn will give birth to various styles of democracy with various predicates placed on them.

Bagir Manan, stated that "the presence of democracy is not only measured by the existence of democratic institutions, such as the existence of representative bodies, elections are not a guarantee of the presence of democracy. Democracy is not just an institution or institution. Democracy is also a mechanism, it would not even be an exaggeration to mention it, a democratic mechanism is a determinant for measuring the presence of real democracy, both in the life of the state or government and in the life of society in general. Culturally democracy will thrive if it is supported by democratic behavior such as readiness to differ opinions, readiness to lose, readiness to compete fairly, peaceful attitude and so on."¹⁷

In the opinion of the author in carrying out democracy, there are several foundations that need to be considered, namely:

a. Philosophical Foundation

Democracy has become a highly exalted term in the history of human thought about the ideal socio-political order. One of the reasons for justifying democracy is because democracy is the only system of government in which people do not become subjects dictated by something outside themselves, but together with other people participate in the government process, as contained in Abraham's definition. Lincoln about democracy, namely "..... that government of the people, by the people and for the people shall not perish from earth..." Or as Aristotle said: "If freedom and equality, as many think, are found in democracy, it will be realized if everyone is involved in government. So,"¹⁸

Accommodation of the people's will is the main condition for the functioning of a democratic system in a country. Therefore, representative democracy that is used in every country must be able to prove that the space for citizen participation in making decisions is wide open. Political participation is a privilege of the people. Everyone, be it the government, legislature, judiciary, or the general public, is not allowed to limit the people's privileges.

The right to be active or involved in political activities as a natural right is defined by MC Closky as a citizen's voluntary activity to take part in the process of electing a ruler. Similar to MC Closky, Nie and Verba say that political participation is a legal citizen's activity which more or less directly influences the selection of state officials or the actions taken by them.¹⁹

Elections and democracy are closely related in substance and function. Elections are the real actualization of democracy in today's state practices because they are the main means for the people to declare their sovereignty over the state

¹⁷ Bagir Manan, *Welcoming the Dawn of Regional Autonomy*, (Yogyakarta, PSH Faculty of Law UII, 2001), p. 64

¹⁸ Carlos Santiago Nino, *The Ethics of Human Rights*, (Oxford: Oxford University Press, 1991), p. 12

¹⁹ Miriam Budiarjo, *Participation and Political Parties A Potpourri*, Jakarta: Gramedia, 1981, p. 2

and government. The statement of people's sovereignty is manifested in the process of involving the community to determine who should run the government and who should oversee the running of the government. In other words, elections elect the executive to run the government and elect members of the legislature who oversee the running of the government. Therefore, the main function of elections for the people is "to elect and supervise their representatives".²⁰

This is at the core of modern democratic practices which are generally known as representative democracy.

The election of regional heads directly by the people is the most obvious expression of people's sovereignty, so that the people in the regions are not only spectators but also determine the future of the region. It is through the election of regional heads that the philosophy of popular sovereignty is truly realized. The direct election of regional heads is the fulfillment of democratic principles, namely public participation in political life through the right to vote and be elected as public officials (head of government/head of region). In accordance with the principle of election in accordance with the constitution, must ensure that the fulfillment of public participation runs directly, publicly, freely, confidentially, honestly and fairly.

b. Juridical Foundation

Regional head election is a manifestation of people's sovereignty. Through the direct election of regional heads is a real expression of people's sovereignty which is more guaranteed than other mechanisms. The direct election of regional heads is also the implementation of constitutional guarantees for people's rights, especially the people's right to participate in government. In the 1945 Constitution of the Republic of Indonesia, provisions for the election of regional heads as a manifestation of people's sovereignty are guaranteed in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Thus the election of regional heads as a guarantee of people's rights to participate in government is guaranteed in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, Article 24 of Law Number. 32 of 2004, The juridical background to the direct election of regional heads includes:

First, that the highest leadership of the country (President) has been directly elected by the people in elections which were conducted for the first time through the 2004 elections, while the lowest regional leaders (village heads) are also directly elected, thus there is no reason for the election of governors, mayors and regents to be carried out directly. directly by the people.

Second, Regional head elections will further realize sovereignty in the hands of the people, as stipulated in Article 1 paragraph (2) of the 1945 Constitution, that sovereignty is in the hands of the people and implemented according to the Constitution.

Third, juridically, Law No. 22 of 1999 which stipulates that regional heads are elected by the DPRD is no longer appropriate because the laws concerning the Composition and Position of the MPR, DPR, DPD and DPRD (Law No. 27 of 2009)

²⁰ Soedjati Djiwandono, TA Legowo, *Revitalization of the Political System*, (Jakarta: Center for Strategic and International Studies (CSIS), 1996,) p. 119

and Law No. 32 of 2004 wants regional head elections to be carried out directly by the people)²¹

One of the objectives of establishing Law Number 32 of 2004 can be read in the consederant section considering letter (a), which reads as follows: "that in the context of administering regional government in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, the regional government, which regulate and manage government affairs according to the principles of autonomy and co-administration, directed at accelerating the realization of social welfare through improvement, service, empowerment, and community participation, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice, privileges and specificity of a region in the system of the Unitary State of the Republic of Indonesia".

Furthermore, in Law Number 23 of 2014, as in Article 62, the implementation of regional head elections is regulated in a separate law, which then issued a Government Regulation in Lieu of Law Number 1 of 2014, then issued several regulations governing regional head elections including Law of the Republic of Indonesia Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws, Law of the Republic of Indonesia Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws, Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation Government Regulation in Lieu of Law Number 1 of 2014 Concerning the Election of Governors, Regents and Mayors Becomes Law, Law of the Republic of Indonesia Number 6 of 2020 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulation in lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, And Mayor Becomes Law Becomes Law.

The election of regional heads directly by the people is a consequence of sovereignty in the hands of the people. With the existence of sovereignty in the hands of the people, in turn it will accelerate the welfare of the people. The direct election of regional heads has many important meanings, namely;

- a. The direct election of regional heads is expected to minimize the development of money politics. Efforts to prevent the occurrence of money politics must be carried out continuously, bearing in mind that the phenomenon of money politics is increasingly condensed in political games in Indonesia;
- b. People who directly elect their regional heads can have a high sense of belonging. Because the Regional Head elected is his own choice. Thus, both the bad performance and the policies of the government, the people should also be responsible. Because, they are the ones who vote and as good voters will certainly choose the best candidate;

²¹Catur Wido Haruni, "Responsibility of Regional Heads in Administrative Administration After Direct Regional Head Elections", (Journal of the Constitution, Vol II, No. 1, month June 2009), p. 89

- c. The direct election system will produce regional heads who are more independent and have a strong (legitimate) mandate. Because, this election closes the opportunity for compromise in the legislature so that as a consequence regional heads cannot be brought down except by their own people;
- d. The checks and balances mechanism between the regional head and the DPRD will be more effective and more balanced, because both are elected by the people;

4. Election of Regional Heads to Realize the Implementation of Regional Government in Improving People's Welfare.

Law Number. 23 of 2014 concerning Regional Government has been amended by Law Number. 12 of 2008, which specifically has made changes to the provisions governing regional head elections, as the embodiment of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, namely "" Governors, Regents and Mayors respectively as heads provincial, district and city regional governments are elected democratically.

The election of a regional head will affect the administration of governance in the region, especially in the implementation of regional heads can improve the welfare of their citizens, with various breakthroughs to move the wheels of the economy in autonomous regions, which are implemented in the regional head's vision and mission, which are spelled out every year in the Articles of Opinion and Regional Expenditure (APBD) which can be seen in the acquisition of PAD (Regional Original Revenue)

In the implementation of regional government in the regional autonomy system, the regional head is obliged to understand autonomy, which means having his own regulations or having the right/power/authority to make his own regulations. So, in terms of autonomy, it has developed into "self-government", this self-government includes self-regulation or legislation, self-execution, within certain limits also the judiciary and the police themselves.

Definition of Regional Autonomy Regional autonomy is the delegation of authority from the central government to regional governments to regulate and manage certain affairs. The affairs delegated by the center to the area are called regional household affairs. In other words, the regional household system is an arrangement related to the distribution of authority, duties and responsibilities for managing government affairs between the center and the regions.

These areas that are given the authority to manage their own household affairs are then called autonomous regions. The principle of decentralization in the implementation of regional autonomy is a delegation of authority from the central government to regional governments to regulate and manage their own regional households called the principle of decentralization. Delegation of authority in decentralization takes place between autonomous institutions at the center and autonomous institutions in the regions. The principle of decentralization in Indonesia is regulated in Law Number 23 of 2014. The principle of deconcentration is the delegation of some government affairs which are the authority of the central government to regional heads. Delegation to regional heads is carried out because regional heads are representatives of the central government. governor, mayor,

The Role of Regional Government in Regional Autonomy, The principle of co-administration is an assignment from the central government to an autonomous region to complete some of the governmental affairs which fall under the authority of the central government. It can also be from the provincial regional government to the regency or city area to carry out some government affairs which are the authority of the provincial area.

Objectives of Regional Autonomy The implementation of regional autonomy in Indonesia has several objectives, namely: a) Realizing the democratization of the government system in the regions. b) Reducing disparities between regions. c) Empowering and increasing the capacity of the regional economy. d) Creating a fair regional financing system, e) Proportional, and f) Transparent. g) Realizing participatory regional administration. h) Strengthen the system of financial accountability by local governments. i) Creating local accountability so that it pays more attention to the rights of its people. j) Facilitate anticipation of various problems that arise and are faced by the community. k) Increase the participation of civil society. l) Improving the quality of public services.

The implementation of regional autonomy is based on three principles, namely broad, real, and responsible autonomy.

- a. Broad autonomy is the granting of the widest possible authority to the regions to manage and regulate all government affairs outside those that are the affairs of the central government.
- b. Real autonomy is that governance is carried out based on duties, authorities and obligations that do not actually exist and have the potential to grow and develop according to regional conditions.
- c. Responsible autonomy is that the administration of government must be in line with the goals and intent of granting autonomy, namely empowering the regions in order to improve people's welfare as a major part of national goals.

Regional autonomy can be interpreted as the rights, authorities and obligations given to autonomous regions to regulate and manage their own government affairs and the interests of the local community to increase the effectiveness and efficiency of governance in the framework of serving the community and implementing development in accordance with statutory regulations. . Thus a regional head who succeeds in leading a region is a regional head who can improve the economy in the region and improve the standard of living of citizens in the form of increasing per capita income.

CONCLUSION

A. Conclusion

As the author has described in Chapter II and especially Chapter III, it can be concluded as follows:

1. A candidate for regional head who is nominated by a political party or coalition of political parties, as well as an individual candidate, at least a candidate who can truly become a leader with integrity, dedication, creativity and innovation.
2. A candidate for regional head who is elected as a regional head is expected to significantly increase the welfare of the people, improve the economy and progress of the region.

B. Suggestion

Starting from the description of the conclusions as mentioned above, the following recommendations are proposed:

1. A political party or a combination of political parties or an individual candidate is at least a candidate who is committed to advancing and prospering his people, and is not solely aiming at seeking victory to achieve power.
2. A person who is elected as a regional head can at least be a role model for all elements within the regional government and the people, avoiding despicable actions.

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