

## RECONSTRUCTION OF THE IMPLEMENTATION OF REGIONAL HEAD ELECTIONS BASED ON THE VALUE OF JUSTICE

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### ABSTRACT

*The purpose of this study is to examine, to analyze, and to reconstruct the regulations for the implementation of regional head elections based on the value of justice. The research method used is juridical empirical. This research is a qualitative research, the type of data used is primary and secondary data. Data collection techniques through literature and field studies, interviews and questionnaires). The data collected were analyzed through descriptive analytic. The legal theory used is the theory of justice, the theory of democracy, the theory of the legal system, the theory of general elections, and the theory of progressive law. The results of the study found that the reconstruction of regulations for the implementation of a fair regional head election, namely realizing a just democracy and welfare for all citizens.*

**Keywords:** Reconstruction; Regional Election; fair

### INTRODUCTION

Second Amendment to the 1945 Constitution of the Republic of Indonesia which affirms: "Governors, Regents, Mayors respectively as Heads of Provincial, Regency and City Governments are democratically elected". In fact, according to the system of government of Indonesia as a unitary state, the Government of the Republic of Indonesia from the highest level of the Central Government to the level of sub-district and village government, all levels of government are under the power of the President, thus there should be no difference between the presidential election system and the head election system. The area under it.

In the unitary state system, there is no known subordination of government at the levels of government below it. That is, if adopting a presidential form of government, which means the President as Head of State and Head of Government is directly elected by the people through elections, regional heads in autonomous regions must also be directly elected by the people. through elections. The legitimacy of the head of government in a presidential government does not lie with the DPR (House of Representative), but with the people, both the President and the DPR (House of Representative) have direct mandates and legitimacy from the people because the presidential government system separates the holders of executive and legislative powers.<sup>1</sup> However, if using a parliamentary system of government, which means that the head of government is elected by members of parliament, then the logical consequence is that the head of government in an autonomous region must also be elected by members of the DPRD (Regional House of Representative).

From the description above, there are quite basic implications of the amendment to the 1945 Constitution of the Republic of Indonesia on the system and implementation of regional head elections, especially when viewed from the democratic values contained in the basic values of the 4th Precept of Pancasila and in terms of aspects the government system of the Unitary State of the Republic of Indonesia and the principle of autonomy in the administration of local government.

The problems that arise in the implementation of regional head elections are colored by illegal or fraudulent practices, which damage the values of Pancasila democracy, namely the principles of direct, general, free, secret, honest and fair as regulated in the 1945 Constitution of the Republic of Indonesia. Article 22E Paragraph (1) and Law of the Republic of Indonesia Number 1 Year 2015 concerning the Stipulation of PerPu Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become Laws. RI Law Number 10 of 2016 which amends several provisions in Law of the Republic of Indonesia Number 1 of 2015, does not regulate the incumbent regional head candidate to resign since it was determined by the KPUD (Regional Election Commission), which is regulated only to take leave in the campaign stage.

In addition, every general election including regional head elections is always haunted by money politics. Money politics is considered an effective way to win direct regional head election contestations. Money politics, both those who receive and those who give are considered normal and should be. By the community it is considered a natural and normal thing because it is considered a five-year party. They don't or care less about the bad effects of that acceptance. This sociological condition of society is further exacerbated by the weak law enforcement against the practice of money politics. There has never been a candidate pair whose victory has been canceled or canceled because of using money politics. Whereas money politics is carried out very transparently and may be vulgar.

The Law of the Republic of Indonesia Number 1 of 2015 and its amendments and the Bawaslu/Supervisory committee also appear to be clearly powerless to overcome the rampant money politics in the regional head elections. The limited authority of Bawaslu/Supervisory committee and internal obstacles in Gakumdu are suspected to be the cause of at least the alleged violations/crimes of regional head elections being examined, tried and decided in court.

Then according to the chairman of the General Elections Supervisory Agency (Bawaslu), 199 violations of the neutrality of the State Civil Apparatus (ASN) often occurred during the 2020 Regional Election. There were 917 violations of ASN neutrality during the 2020 elections consisting of: 484 cases of providing support to one candidate pair on social media, 150 cases of attending political party socialization, 103 cases approached political parties, 110 cases supported one candidate pair; and 70 village heads supported one of the candidate pairs.

<sup>1</sup> Ramlan Surbakti, "Parpol dan Masyarakat Warga", Kompas, Friday, September 26, 2014.

Regarding the neutrality of general election organizers, the Election Organizers Honorary Council (DKPP) also reported that specifically for 2020, from January to December 2020, DKPP had received 415 complaints of alleged violations of the election organizers' code of ethics (KEPP) involving 698 people. Based on the institution, election organizers from Regency/Municipal KPU were the most reported with 334 people. In second place are election organizers from Regency/City Bawaslu with as many as 229 people. Based on the DKPP's 2020 decision area, Papua and North Sumatra provinces became red zones because of more than 50 complaints with 149 complaints and 95 complaints respectively. Of all these complaints, only 184 who met the requirements became a case and were tried by the DKPP. 101 cases of which the verdict has been read. The 101 cases that have been decided involve 409 organizers who sit on the The complainant bench in the DKPP trial. Of all the defendants whose verdicts were read out, 200 defendants (42.8%) received rehabilitation because they were not proven to have violated the KEPP.

Meanwhile, 209 other defendants received sanctions because they were proven to have violated the KEPP. The sanctions imposed by the DKPP on the 209 Defendants are also very diverse, including Written Warnings or Warnings for 174 Defendants (42.5%), Temporary Dismissal for two Defendants (0.4%), Permanent Dismissal for 26 The complainant (6.3%), and Dismissal from Position for seven The complainant (1.7%).<sup>2</sup>

According to Jimly Asshiddiqie, the ideal standard of behavior in political life that is practiced in various countries today, no longer only relies on measures of certainty, justice, and the usefulness of law based on the principles of the rule of law, but is more idealized to have more integrity on the basis of more substantial political ethics (rule of ethics)<sup>3</sup> Thus, the main key to building a democracy with integrity, is not just a formalistic and procedural election or regional head election that only prioritizes law and legal justice, but must also prioritize ethical considerations to perfect legal logic for substantive justice.

Direct regional head elections are expected to be part of building people's political awareness of democracy, returning sovereignty to the people. Regional head elections are expected to be democratic, transparent, honest and fair. All stages of selection expected to be free from various forms of fraud, violence, bribery that can affect the election results, including to maintain the dignity of democracy and the authority of the office of the regional head itself.

## RESEARCH METHOD

The research method used is juridical empirical.<sup>4</sup> This research is a qualitative research, the type of data used is primary and secondary data.<sup>5</sup> Data collection techniques through literature and field studies, interviews and questionnaires). The data collected were analyzed through descriptive analytic.<sup>6</sup>

## DISCUSSION

### A. Regulations for the Implementation of Regional Head Elections in Other

Countries According to Samuel Humes and Eileen Marten, the diversity of filling the positions of regional heads has also been widely known and widely practiced in several countries in the world, which is done by (i) Regional Heads are appointed by the central government or higher units; (ii) the Regional Head is elected by the council; (iii) Regional Heads are elected through general elections; and (iv) the Regional Head is appointed by the council.<sup>7</sup>

The implementation of local government both in Indonesia and a number of

Other countries generally use three mechanisms to elect the chief executive, namely (i) the head of the region is directly elected; (ii) indirectly elected by the board; and (iii) appointed by the central government.<sup>8</sup>

Briefly, the recruitment mechanism for filling the position of chief executive

In general, what is carried out in many countries is as follows:

#### 1. Chief Executive Appointed By Central Government/More Units Tall

The role of the Regional Head is greatly influenced by the election mechanism, whether by the central government, the council, or through general elections. The choice of this mechanism is one of the determinants of the level of government representation and the accountability of the chief executive to the people. Through the mechanism of appointing the chief executive by the central government or higher units, it means that there are fewer selections made by local units.<sup>9</sup> Nowadays there is a lot of practice for the central government to appoint a chief executive, whereas at the municipal level there has been a trend over the last century that all chief executives are elected, while the change from appointed governor to elected, while the change from governor

<sup>2</sup> Laporan Kinerja Dewan Kehormatan Penyelenggara Pemilu Tahun 2020 di Jakarta tanggal 19 Desember 2020

<sup>3</sup> Jimly Asshiddiqie "Kata Pengantar", dalam Zainal Arifin Hoesein dan Rahman Yasin, *Pemilihan Kepala Daerah Langsung Penguatan Konsep dan Penerapannya*, Lembaga Pengembangan Pendidikan anak Bangsa (LP2AB), Jakarta, 2015, page. IX.

<sup>4</sup> Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy, *JPH: Jurnal Pembaharuan Hukum*, Volume 8, Number 3, December 2021.

<sup>5</sup> Sunaryati Hartono. . *Legal Research in Indonesia at the End of the 20th Century*, Bandung: Alumni. 1994

<sup>6</sup> Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, *The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee*, *Jurnal Akta*. Volume 9 No. 3, September 2022.

<sup>7</sup> Samuel Humes and Eileen Martin, *The Structure of Local Government, A Comparative Survey of 81 Countries* (The Hague: International Union Local Authority, 2011), page. 137- 144

<sup>8</sup> Sarundajang. *Pemerintahan Daerah di Berbagai Negara, Tinjauan Khusus Pemerintahan Daerah di Indonesia: Perkembangan Kondisi dan Tantangan* (Jakarta: Sinar Harapan, 2012), page. 165-166.

<sup>9</sup> Leo Agustino, *Pilkada dan Dinamika Politik Lokal* (Yogyakarta: Pustaka Pelajar, 2012), page. 8-9.

appointed to locally elected occurs more slowly.<sup>10</sup> Many of the chief executives appointed from the center are employees of the central civil government.

In many countries, the regional chief executive is appointed by a higher unit and is not a central government official. persons with sufficient administrative or political experience.<sup>11</sup>

In Scandinavian countries, provincial governors are officials of the central government. With the appointment by the central government, the central government can intervene in all areas of authority of the Regional Head.<sup>12</sup>

In some Asian and African countries, which were previously In parts of the United Kingdom, India and Sudan, for example, there are often chief executives from the center who are appointed as regional chief executives. In the past, a common practice was for the chief executive of the district to become the ex-officio chairman of the urban municipal council. This arrangement places the chief executive in a strong position to influence decisions or policies in local government, especially since district administration staff often also perform administrative duties in local units. Supporters of this system are coordinated with local activities and district units to eliminate duplication of functions. Administrators appointed to be heads of urban centers in Sudan and India are generally civil servants of central government assigned (secondary) to urban areas. The central government employee who is the chief executive has privileges as a civil servant and his office, and serves fully in India these officials do not simultaneously serve as chairman of the board.<sup>13</sup>

In Malaysia, the chief executive from the center is also the official KDH and chairman of the local council.<sup>14</sup> Furthermore, in Sweden, the local government consists of 21 provinces, each of which has a Provincial Administration. The Administrative Body represents the central government at the provincial level and is headed by a State Governor who is appointed by the central government.<sup>15</sup>

In the Netherlands, considerations between administrative and political abilities seems dominant in the appointment of mayoral positions. Appointments are made by royal decree, which is enforced by the Cabinet or the Minister of the Interior with the provincial governor, who usually plays an initiating role. An attempt was made to identify a person who was administratively competent and had political loyalties, who would make it possible to work as chief executive easily  
With local council.<sup>16</sup>

In Spain, the mayor of a municipality with a population of less than 10,000 is appointed by the provincial governor, while the mayor of a city large with a population of more than 10,000 people appointed directly by the Minister of Home Affairs. Almost always the post of mayor and local party leader are held by the same person.<sup>17</sup>

In the Canadian State of Ontario, the Lieutenant Governor is appointed by Governor General through recommendation by the Prime Minister and the Federal Government Cabinet. The appointments are made over a period of no more than 5 years, and receive a salary from the federal government. The Lieutenant Governor cannot be fired before 5 years, except for reasons that must be communicated to the Senate and the House of Representatives.<sup>18</sup>

There are also Regional Heads who are appointed by the council have many advantages, among others (i) the chief executive has a fairly secure term of office, in the sense that the board cannot drop or dismiss the chief executive in the middle of his term of office so as to ensure the continuity of local unit programs and policies; (ii) is an expert in the field of government and bureaucracy; (iii) have an authoritative and superior position among the board members; (iv) have close relationships with central government officials and so are in an advantageous position to know what higher authorities will agree to; (v) can act as intermediary

Effective communication between central and local governments; (vi) no affected by the ups and downs of local politics so as to be able to survive between party disputes and local politics; and (vii) the cost of lifting is relatively minimal because it does not need to go through a long and complicated process.<sup>19</sup>

Besides the advantages, regional heads who are appointed by the council also has shortcomings, including (i) Regional Heads appointed by the center are vulnerable to not getting support from local councils in carrying out their programs; (ii) lack of high legitimacy against the people in the area they lead, so that they often contradict the will of the people they lead; (iii) the chief

<sup>10</sup> Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Paska Reformasi* (Jakarta: PT Bhuana Ilmu Populer, 2012), page. 440.

<sup>11</sup> Dwi andayani Budi setyowati, *Hukum Otonomi Daerah Di Negara Kesatuan RI*, Jakarta, roda inti media, 2013, page. 32.

<sup>12</sup> John Loughlin, Frank Hendriks, and Anders Lidström, *The Oxford Handbook of Local and Regional Democracy in Europe* (Oxford: Oxford University Press, 2011), p. 263.

<sup>13</sup> Richard C Crook and James Manor, *Democracy and Decentralization in South Asia and West Africa: Participation Accountability and Performance* (United Kingdom: Cambridge University Press, 2012), p. 214 -216.

<sup>14</sup> Noore Alam Siddiquee, *Public Management and Governance in Malaysia: Trends and Transformations* (New York: Routledge, 2012), page. 202.

<sup>15</sup> Neil C. M. Elder, *Government in Sweden: The Executive at Work* (London: Pergamon, 2011), page. 28.

<sup>16</sup> Rudy B. Andeweg and Galen A. Irwin, *Governance and Politics of the Netherlands (Comparative Government and Politics)* (London: Palgrave Macmillan, 2012), page. 215.

<sup>17</sup> Hubert Heinelt and Xavier Bertrana, *The Second Tier of Local Government in Europe: Provinces, Countries, Departments, and Lankreise in Comparison* (New York: Routledge, 2011), page. 224-239.

<sup>18</sup> United cities and local Governments, *Decentralization and Local Democracy in The World* (Spain: World Bank, 2012), page 248-250.

<sup>19</sup> David M. Thomas and David N. Biette, *Canada and The United States: Differences That Count* (Canada: University of Toronto Press, 2014), page 142-144

executive will tend to depend on and be influenced by the central government in decision-making; and (iv) tend to be intervened by Central government.<sup>20</sup>

## 2. Chief Executive Elected by the Board

This mechanism is the most used mechanism in many countries in electing mayors as in most of Europe. Elections of chief executives by local councils are often exercised as partisan political choices. One party in the majority, will dominate the power in the local council. If there is one candidate for chief executive maybe the problem will be simpler, but if not then the constellation. Local politics can be a tricky issue. In European countries, the mechanism proportional representation used in the election of the chief executive in the city often prevents one of the parties from becoming a candidate for the chief executive. Usually the parties in the local council will form a coalition so that it becomes the majority party, and then elects the chief executive. As in Belgium, in theory, the mayor in Belgium as the chief executive is the representative of the center, but in practice the chief executive is the head elected by the council.<sup>21</sup>

There are several advantages in this mechanism, among others (i) the required cost is relatively smaller; (ii) the vision and mission will be more accepted by the board because it must have the same vision and mission as the board; (iii) stronger board support to the chief executive in every program run by the chief executive; and (iv) minimizing the potential for horizontal conflicts.<sup>22</sup>

In addition, there are several shortcomings in this mechanism, including (i) the elected chief executive does not necessarily represent the wishes of the local community and even sometimes there can be differences between the interests and desires of the council and the community; (ii) the chief executive's dependence on the political party or local council members who elected him (because of the retribution for having been elected) so easily dictated and not fully sovereign; (iii) prone to occur money politics and political transactions involving candidates for chief executive with local council members; (iv) the elected chief executive does not have sufficient capacity to run the government; (v) the term of office of the chief executive tends to be unstable as it can be overturned at any time by the local council as in France where the chief executive elected by the local council can be forced to resign through a vote of no confidence; (vi) the local council has a big role in selecting, firing, and even has control over the executive; (vii) through this mechanism can lead to factionalism and tend to reduce working relationships that can result in effective programs; (viii) the views of the chief executive tend to be dominated and bound by political considerations in order to maintain the confidence of the majority of the board.<sup>23</sup>

## 3. Chief Executive Elected By General Election

The direct election of regional heads is considered the main mouthpiece of democracy because it involves people's participation. In a participatory democracy, including in the direct election of regional heads, it is necessary active roles and functions of the community to control the performance of the Head Regions in the implementation of good local governance (good local governance).<sup>24</sup>

In some countries, including the United States, a large number of local units elect the chief executive (mayor) directly through general elections.<sup>25</sup>

The application of general election practices to Regional Heads is influenced by the ideas of the 'separation of powers' as expressed by Montesquieu. The Federal Government of the United States is perhaps the best-known example of a political organization formed according to these ideas, the state and many local government structures have been greatly influenced by the national model. In addition, national or local governments, and several other countries, such as Brazil and the Philippines, have followed the example of the United States to hold direct elections for Regional Heads.<sup>26</sup>

The direct election of the chief executive in Indonesia is an interesting issue, because this phenomenon indicates a political process that will strengthen democratization in regions in Indonesia and has de facto consequences, including, (i) increasing political awareness of constituents; (ii) improve community access in order to influence local government decisions, especially those that relating to the interests of citizens; (iii) motivate local media to be actively involved in publicizing all stages of the election; (iv) encourage the development of the spirit of independence of political parties in the regions; (v) can suppress the attitude and behavior of the DPRD which often considers itself as the only institution holding the most representative people's mandate considering that through general elections it has the potential to limit the power and authority of the DPRD; (vi) to produce more qualified Regional Heads because they are tested by the community themselves through general elections; (vii) establishing a more stable, productive and effective local government.<sup>27</sup>

<sup>20</sup> J. Eric Oliver, Shang E. Ha, and Zachary Callen, *Local Elections and the Politics of Small-Scale Democracy*, (United Kingdom: Princeton University Press, 2012), page. 245.

<sup>21</sup> Oscar W Gabriel, Silke I Keil, Eric Kerrouche, *Political Participation in France and Germany (Europe: European Consortium for Political Research, 2012)*, page. 123.

<sup>22</sup> John Kincaid and Nico Steytler, *Local Government and Metropolitan Regions in Federal Countries* (Canada: McGill-Queen's University Press, 2012), page. 416

<sup>23</sup> Ann O'm Bowman Richard C. Kearne, *State and Local Government: The Essentials* (Boston: Cengage Learning, 2014), page. 170.

<sup>24</sup> John Kincaid and Nico Steytler, *Local Government and Metropolitan Regions in Federal Countries* (Canada: McGill-Queen's University Press, 2012), page. 416

<sup>25</sup> Joakim Öjendal and Anki Dellnäs, *The Imperative of Good Local Governance: Challenges for the Next Decade of Decentralization* (United States: United Nations University Press, 2013), page. 250

<sup>26</sup> David Y Miller and Raymond Cox, *Governing the Metropolitan Region: America's New Frontier* (United States: Taylor & Francis, 2014), page. 220.

<sup>27</sup> Andrew Coulson and Adrian Campbell, *Local Government in Central and Eastern Europe: The Rebirth of Local Democracy* (New York: Routledge, 2014), page. 142.

Furthermore, the general election of Regional Heads, especially in Indonesia, creates ideal checks and balances between DPRD and Regional Heads. This is because both of them have balanced political legitimacy because they were both directly elected by the people so that the heavy legislative experience that occurred during their validity period Law No. 22/1999 will not be repeated<sup>28</sup>.

In practice more than 70% of Regional Heads in the United States are elected by election. In the general election for regional heads, each registered candidate can win if he has the largest number of votes. In this mechanism, generally independent candidates have a lower chance of winning at the polls, even so, it is possible to win in the general election.<sup>29</sup>

In Japan, governors, mayors, and DPRD members are directly elected by the people through direct elections. However, governors and mayors can be removed by a vote of no confidence with 2/3 of the votes in the local (provincial or city) councils.<sup>30</sup>

Similarly, Thailand chooses the governor through elections and can be dismissed by referendum or dismissed by the Minister of the Interior.<sup>31</sup>

The advantages of this mechanism have several advantages, including (i) it can be a means to strengthen regional autonomy; (ii) the elected Regional Head will have a very strong mandate and legitimacy; (iii) Regional Heads do not need to be bound by the concessions of the political parties or factions that have nominated them; (iv) a more accountable general election system and public accountability; (v) checks and balances between the legislative and executive institutions can be more balanced; (vi) the criteria for candidates for Regional Heads can be assessed directly by the people who will cast their votes; (vii) regional head elections as a forum political education for the people; (viii) as a form of development democracy; (ix) the general election of Regional Heads will allow for the creation of national leadership qualities because there are more opportunities for the emergence of national leaders from below and/or regions; (x) regional head elections as preparation for a further political career; (xi) build political stability and government effectiveness at the local level and prevent separatism; (xii) creating political equality; (xiii) preventing the concentration of power at the center; and (xiv) the existence of a regional head's vision and mission platform that will become the basic basis for regional planning.<sup>32</sup>

Disadvantages This mechanism has several drawbacks, including (i) the relatively large cost of holding regional head elections; (ii) there is still a lot of money politics going on to increase support; (iii) community political participation is still minimal; (iv) greater potential for horizontal conflict; (v) The elected Regional Head does not necessarily understand the government because he may be elected because of popularity; (vi) abuse of power by the incumbent.<sup>33</sup>

#### 4. Chief Executive Appointed By The Board

This mechanism is a new trend that is developing in the United States. Through this mechanism, the local council will appoint a regional head. Based on experience in the field of government. There is the difference between election and appointment by the council, namely (i) the election of Regional Head by the council will generally be influenced by a high political element so that the elected Regional Head is generally a politician; while at the time of appointment, the candidate for the Regional Head who is appointed is a candidate who is expected to be filled by a party who has the ability in the field of government that is qualified and can come from outside the party; (ii) in general elections, the council will only appoint candidates for regional heads who come from that area; while in the appointment, the council can appoint a candidate for the head. Areas originating from outside the area.<sup>34</sup>

In Finland, the Regional Head who is appointed by the council is the chairman of the council itself or the head of a section in the regional government. In the event that the Regional Head is unable to carry out his duties properly, there must be a quorum of from the council that agrees on the dismissal of the Regional Head and the decision must be submitted to the government. province for approval.<sup>35</sup>

In many cities in the United States, the local council in the United States city will appoint a "city manager" as District Head. As the Regional Head, the city manager not only explains and defends the proposal in front of the council but also in front of the community. The city manager's proposal has the opportunity to be rejected or even if it is considered unable to work well, it is possible that the city manager may be fired by the local council.<sup>36</sup>

This mechanism has a number of advantages, including (i) people who is appointed by the Regional Head is someone who is an expert in the field of government; and (ii) minimal costs incurred. Besides having advantages, this mechanism also has weaknesses, including (i) the term of office of the Regional Head depends on the political conditions within the local council so that the council can request his dismissal at any time; (ii) the high level of political influence within local councils over the policies adopted by KDH; and (iii) the Regional Head appointed by the local council may not reflect the representation of the people.

<sup>28</sup> Momon Soetisna Sendjaja dan Sjachran Basah, *Pokok-Pokok Pemerintahan Di Daerah dan Pemerintahan Desa* (Bandung: Alumni, 2013), page.

<sup>29</sup> Sean D. Foreman and Marcia L. Godwin, *Local Politics and Mayoral Elections in 21st Century America* (New York: Routledge, 2015), page. 3-5.

<sup>30</sup> Mark Kesselman, Joel Krieger, and William Joseph, *Introduction to Comparative Politics: Political Challenges and Changing Agendas* (Boston: Cengage Learning, 2015), page. 251-252.

<sup>31</sup> William Case, *Handbook of Southeast Asian Democratization* (New York: Routledge, 2014), page. 302.

<sup>32</sup> Dahlan Thaib, *Ketatanegaraan Indonesia Perspektif Konstitusional* (Yogyakarta: Penerbit Total Media, 2011), page 78

<sup>33</sup> Ari Pradhanawati, *Regional Election Langsung Tradisi Baru Demokrasi Lokal* (Surakarta: KOMPIP, 2011), page. 140.

<sup>34</sup> Graham Samson and Peter McKinlay, *New Century Local Government: Commonwealth Perspectives* (Australia: Commonwealth Secretariat, 2013), page. 218.

<sup>35</sup> Johannes Kananaen, *The Nordic Welfare State in Three Eras: From Emancipation to Discipline* (United Kingdom: Ashgate, 2014), page. 141

<sup>36</sup> Joseph Bessette and John Pitney, *American Government and Politics: Deliberation, Democracy, and Citizenship* (Boston: Cengage Learning, 2014), page 401-40

Based on the description above, the mechanism for selecting Regional Heads which is generally practiced by many countries in the world, namely (i) Regional Heads are appointed by the central government or higher units; (ii) the Regional Head is elected by the council; (iii) Regional Heads are elected through general elections; and (iv) the Regional Head is appointed by the council. The dynamics of the regional head election system in Indonesia is also inseparable from history regional head election system.

The phrase "elected democratically" in Article 18 paragraph (4) of the 1945 Constitution can basically be interpreted as direct election or election through DPRD, while both are constitutional.

Various changes are marked by the enactment of various laws and regulations related to Regional Government. In the historical context of the election of Regional Heads, several electoral systems have been implemented, (i) during the colonial period Regional Heads were appointed by the government; (ii) during the independence period the Regional Head is appointed by the President/Minister of Home Affairs; (iii) during the New Order, regional heads were elected by the DPRD to be then appointed by the President; (iv) during the reformation period, the regional head election system underwent several changes, starting with the election of regional heads by the DPRD (Law No.1999), direct general elections by the people in the area concerned (Law Number 32 of 2004), returned to the election of Regional Heads by DPRD through Law Number 22 of 2014 but due to people's refusal it was finally revoked and the mechanism of Regional Heads was replaced again through direct elections by the people ((Perppu Number 1 Year 2014). Thus, it can be said that direct election by the people is the mechanism most supported by the people as a form of democracy.

#### **B. Reconstruction of Legal Norms for the Implementation of Regional Head Elections Based on the Value of Justice**

Since the implementation of the first General Elections (Election) in Indonesia in 1955, efforts to bring quality and integrity General Elections (Election) have begun. Normatively, the principles of holding General Elections (Pemilu) based on honesty, confidentiality, tranquility, and directness have been guaranteed. This shows that the state from the beginning has had a strong desire to facilitate the people as the holder of the highest sovereignty to exercise their political rights in a conducive atmosphere.

In the context of the Regional Head Election (Regional Election), the meaning of quality and integrity has basically been summarized in the sense of a democratic Regional Election which requires at least 2 (two) things, namely: free and fair election. However, the very dynamic development of democracy has made many parties dissatisfied with the 2 (two) criteria for democracy. The Electoral Integrity Group which was declared with the title Toward an International Statement of principles of Electoral Justice in Accra, Ghana, on September 15, 2011 consisted of 15 retired Supreme Court Justices and former General Election organizers from 13 (thirteen) countries, including Indonesia. propose the justice of the General Election (Election) as a parameter of the General Election (Election) of democracy, which is analyzed with 10 (ten) principles, namely:

1. High integrity.
2. Involve many residents.
3. Based on high certainty law.
4. Impartial and fair.
5. Professional and Independent.
6. Transparent.
7. On time according to plan.
8. Non-violent or free from threats and violence.
9. Regularly.
10. Election participants (General Election) accept that it is natural to lose and win.

Indonesia as one of the largest democracies in the world has determined 6 (six) parameters for a democratic general election as contained in the 1945 Constitution of the Republic of Indonesia. Article 22 E Paragraph (1), namely: direct, general, free, confidential, honest, and fair, which is then added again by the General Election Law (Election) and the holding of General Elections (Election) which is its derivative, namely: transparent, accountable, orderly, and professional.

There is also upholding electoral justice. Voting is one of the stages in the election process. This stage is very decisive because at this stage citizens who have the right to vote actually exercise their right to vote. Based on the results of this vote, the electability of the candidate pairs is determined. Thus, it is very necessary to carry out the voting stages by taking into account the principles of freedom of choice and integrity to honestly let the voters cast their votes according to the choice they want. One of the free and fair elections can be seen in the voting process.

The establishment of the Constitutional Court to examine violations that occur at an election stage, and assess their significance to the election results is carried out to uphold all aspects of electoral justice (electoral justice). The word "fair" in the provisions of Article 22E paragraph (1) of the 1945 Constitution is one of the principles in elections that also applies to regional head elections. This "fair" principle can be said to refer to electoral justice which is closely related to the protection of citizens' rights to vote.

Electoral justice is a very important factor in the implementation of an election, both in the context of direct general elections and regional head elections, which the Court has referred to as material elections that are still based on the principle of general elections based on the constitution. The idea of an electoral justice system contains three main aspects and this is related to the general election mechanism that exists in each country. International IDEA states that there are three things that are contained in the enforcement of electoral justice, namely ensuring that every action, process, and decision taken related to the process is in accordance with the existing legal framework, protecting and restoring the right to vote, and providing capabilities to people who believe that their rights their right to vote has been violated to file a lawsuit that is being processed in court and to accept a decision on it.

Indonesian election law has basically accommodated the resolution of electoral disputes at all stages, both disputes involving the process and disputes relating to results. Each has a different settlement channel. Disputes concerning the process may involve administrative disputes as well as criminal matters, each of which is under the authority of the state administrative

court and the Integrated Law Enforcement Center which handles election crimes. Disputes over results are within the authority of the Constitutional Court to examine and adjudicate.

The development of the handling of disputes over the results of the regional head elections in the Constitutional Court has taken into account the problems that occur in the process of holding elections which are not actually the authority of the Constitutional Court. However, there are constitutional considerations as to why the Constitutional Court also takes part in dealing with problems that occur in the electoral process or elections. When making a decision whether the Constitutional Court will adjudicate the process dispute or not, the Constitutional Court, in its decision, asks the following questions: "Are violations of the provisions of laws and regulations in the Regional Head General Election process that can affect the vote acquisition and vote count results can be considered as part of the dispute? post-conflict local election which is also the authority of the Court to assess and decide."

Answering this question, the Court provides several considerations which form the basis for thinking about the Court's authority to examine issues that occur in the general election process. These considerations include the rigid and limited nature of the statutory provisions, unclear and firm when read textually, the absence of effective process dispute resolution, and also that process issues fundamentally affect the outcome. With such considerations, the Court came to the conclusion that "the Court must not allow the rules of procedural justice to stifle and override substantive justice"

In the settlement of disputes over the results of the election (general) of regional heads, there is a development of the Constitutional Court's attitude as shown in its decision:

1. In the decision of the Regional Head General Election of East Java Province, the Court made a legal breakthrough by adjudicating disputes related to the process with considerations including the absence of effective process disputes and unclear and unclear statutory provisions. The Constitutional Court, in this decision broke through procedural rigidity to enforce substantive justice.
2. In the 2015 simultaneous regional head election dispute resolution, the Constitutional Court views the law as having built a legal system as a social engineering and various instruments that regulate the process of dispute resolution institutions so that the Court is subject to the following restrictions. The law determines the percentage of the difference in the votes based on the total population between the pairs of candidates who win the most votes and the Petitioners of the case as regulated in the provisions of Article 158 of Law Number 8 2015.
3. In the settlement of disputes over the results of the 2020 regional head elections. The Constitutional Court used the approach of "postponing the enforcement of the provisions of Article 158" and carried out further examination of the case due to problems in the election process that had not been resolved until the recapitulation of the vote count results and it was deemed that the Constitutional Court needed to explore it more deeply through the evidentiary process at trial. In some cases the Court was unable to use the KPU's decision on the Recapitulation of Vote Count Results as a reference for applying the provisions regarding the threshold in Article 158 due to problems in the process.

This development shows that the Constitutional Court uses a significant violation approach in the election process to the results of the vote. Such considerations are basically in line with the considerations of the Constitutional Court in previous decisions which began with the decision on the dispute over the results of the 2008 East Java Province regional head election.

Such considerations show that the Constitutional Court seeks to enforce substantive justice in selective regional head elections based on strong evidence and the significance of events in the electoral process that affect the vote results. Such a stance is an effort to uphold electoral justice based on the provisions of Article 22E paragraph (1). Electoral justice itself is a concept that has a broad scope in the administration of elections. It is not only about the final election results but the integrity of the entire electoral process and also related to the protection of civil and political rights." In the context of the Constitutional Court as the guardian of democracy and the constitutional rights of citizens, the democratic rights of the public (democratic rights) are a fundamental aspect that must be safeguarded. Democracy gives citizens the right to vote directly and participate in the government of their country.

Then after the announcement of the determination of the results of the vote in the 2021 regional head election, many pairs of candidates other than the winners or even observers in the election of a single candidate submitted a request for a dispute over the results of the regional head election to the Constitutional Court. There are at least 137 applications for disputes over the results of the regional head elections submitted to the Constitutional Court from 270 constituencies. Of the 137 cases submitted to the Constitutional Court, 19 cases were granted, 10 cases were rejected, 97 cases were not accepted, 2 cases were rejected, 6 cases were withdrawn and 2 cases were declared by the Court to be incompetent. There are many interesting things in the development of the settlement of the 2020 Regional Election case in the Constitutional Court, especially if you look at its decisions. It is no less interesting than the disputed decisions on the results of the regional elections in 2008-2013. Many legal breakthroughs were made. Situational application of Article 158 and conditional, the sacredness of the grace period for submitting applications that are deviated in order to seek the meaning of substantive justice and in the context of upholding the principles of electoral justice and so on. This further shows that the Constitutional Court is not a mouthpiece of law that strictly follows the formulation of legal norms. However, the Constitutional Court plays a role in guarding the democratic principles of elections contained in Article 22E paragraph (1) of the 1945 Constitution which states, "General elections are carried out in a direct, general, free, secret, honest and fair manner every five years. is not included in the general election regime, but the principle of this election is also used as a principle in the implementation of regional head elections Judicial activism and legal breakthroughs made by the Constitutional Court in deciding disputes over the results of the regional head elections in 2020 further emphasizes that the Constitutional Court is not a "Calculator Court", but as a "Constitutional Court" which maintains dignity as a guardian of the constitution, guardian of democracy, and protector of the constitutional rights of citizens. This indicator can at least be seen when the Constitutional Court made the election principles contained in the constitution, especially Article 22E paragraph (1) of the 1945 Constitution the basis for testing the constitutionality of holding not only the General Election but also the 2020 Regional Head Election. electoral justice).

Principles of Electoral Justice released by the Institute for Democracy and Electoral Assistance (IDEA) generally contains the meaning of "...ensuring that every action, procedure and decision related to the electoral process is in line with the law (the constitution, statute law, international instruments or treaties and all other provisions in force in a country), and that the enjoyment of electoral rights is protected and restored. giving people who believe their electoral rights have been violated the

ability to make a complaint, get a hearing and receive an adjudication. also plays a role in ensuring that every action, procedure, and decision related to the election process carried out by election organizers must be in accordance with the Constitution 1945 as the highest law, laws, and regulations related to Regional Election must also be in line with international legal instruments. This aims to protect the political rights of every citizen to vote (right to vote) and to be elected (right to be a candidate) as well as to provide an opportunity for each pair of candidates or observers to submit an application to the Constitutional Court if there is something that can affect the votes for each candidate pair.

The discourse on the simultaneous regional elections in 2024 is still being debated by observers of the general election/elections and democracy. Based on the Law of the Republic of Indonesia Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors, simultaneous national elections for Regional Election in all regions of Indonesia will be held in November 2024. In fact, one of the legal implications is that many definitive regional head seats must be filled by the Executive. Assignment (Plt), while regional heads resulting from the 2020 elections will only serve until 2024.

This condition can then damage the quality of democracy and lead to disharmony in development policies. In fact, one of the prerequisites for a democratic country is that there is a regular exchange of ruling elites/regional heads. One of the legal implications is that the Provincial and Regency/Municipal RPJMD is a regional development planning document which is the elaboration of the vision and mission of the pair of regional heads and the elected regional head candidates.

Furthermore, the implications of abuse of authority and power in filling out the Regional Head of the Task Force (Plt). Several major parties, especially the ruling party, will benefit if the regional elections are held in 2024. The party that will benefit is the ruling party. The Acting Regional Head will be prepared in advance to become an extension of the regional government, so that the Acting Regional Head will work perpendicular to the source of power and can have an impact on the politicization of ASN.

**Reconstruction of Regulation of the Republic of Indonesia No. 10 of 2016 concerning the second amendment to Law Number 1 of 2015 concerning the stipulation of Perpu Number 1 of 2014 concerning the election of Governors, Regents and Mayors to become Regulation**

No.	Article	Reason for Reconstructed	Reconstruction (Proposed Changes)
1	Article 70 paragraph (3) Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors, who nominate again in the same area, during the campaign period must meet the following provisions: a. taking leave outside the state's responsibility; and b. prohibited from using facilities related to his position	Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors, who are running for re-nomination in the same area, are not only on leave during the campaign, but must take leave since the KPUD is appointed as a candidate pair for Head Area. Therefore Article 70 paragraph (3) needs to be deleted and replaced with the following provisions: Governor and Deputy Guber-nur, Bupati dan Wakil Bupati, Walikota dan Wakil Wali-kota, yang mencalon-kan kembali pada daerah yang sama, wajib cuti sejak ditetapkan KPUD sebagai	Article 70 paragraph (3) Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors, who are re-nominated in the same area, are obliged to take leave outside the state's responsibility since KPUD is determined as a candidate pair for Regional Head and is prohibited from using the related facilities. with the position
		candidate pair District head.	

<p>2</p>	<p>Article 73 (1) candidates and/or campaign teams are prohibited from promising and/or giving money or other materials to influence organizers and/or voters. (2) candidates who are proven to have committed the violation as referred to in paragraph (1) based on the decision of the Provincial Bawaslu may be subject to administrative sanctions of cancellation as a candidate pair by the Provincial KPU and Regency/Municipal KPU (3) the campaign team who is proven to have committed as referred to in paragraph (1) based on a court decision that has permanent legal force is subject to criminal sanctions in accordance with the provisions of the legislation  (4) Apart from a Candidate or Candidate Pair, members of a Political Party, campaign team, and volunteers, or other parties</p>	<p>Not only candidates who are proven to have committed money politics who are subject to administrative sanctions for cancellation as a candidate pair by the Provincial KPU and Regency/Municipal KPU, but also the campaign team who is proven to have committed money politics and proven to be with the knowledge of the candidate, then based on a court decision that has legal force, it is still subject to prosecution. criminal sanctions in accordance with the provisions of the regulations and the candidate may be given an administrative sanction of cancellation as a candidate pair by the provincial KPU and regency/municipal KPU</p>	<p>Article 73 (1) candidates and/or campaign teams are prohibited from promising and/or giving money or other materials to influence organizers and/or voters. (2) a candidate who is proven to have committed a violation as referred to in paragraph (1) based on the decision of the Provincial Bawaslu may be subject to administrative sanctions of cancellation as a candidate pair by the provincial KPU and regency/municipal KPU (3) the campaign team is proven to have carried out as referred to in paragraph (1) and proven to be with the knowledge of the candidate, then based on a court decision that has permanent legal force, it is subject to criminal sanctions in accordance with the provisions of the legislation and the candidate may be given administrative sanction to cancel as a partner. candidates by the provincial KPU and KPU</p>
	<p>others are also prohibited intentionally commits an unlawful act promising or giving money or other materials as a reward to Indonesian citizens, either directly or indirectly for: a. influencing voters not to exercise their right to vote; b. use the right to vote in a certain way that results in an invalid vote; and c. influence to choose certain candidates or not to choose certain candidates. (5) The provision of administrative sanctions for violations as referred to in paragraph (2) does not invalidate the criminal sanctions.</p>		<p>district/city (4) Apart from a Candidate or Candidate Pair, members of a Political Party, campaign team, and volunteers, or other parties are also prohibited from intentionally committing acts against the law promising or giving money or other materials in return for Indonesian citizens, either directly or indirectly for : a. influencing voters not to exercise their right to vote; b. use the right to vote in a certain way that results in an invalid vote; and c. influence to choose certain candidates or not to choose certain candidates.  then based on a court decision that has legal force, it is still subject to criminal sanctions in accordance with the provisions of the legislation  (5) DELETE</p>

<p>3</p>	<p>Article 30 Duties and Authorities of Regency/Municipal Supervisory committee: a. overseeing the stages of holding the Election which includes: 1. the implementation of supervision over the recruitment of PPK, PPS, and KPPS; 2. updating of voter data based on population data and the determination of the Temporary Voter List and the Permanent Voter List; 3. nominations related to the requirements and procedures for nomination; 4. process and determination of candidates; 5. implementation 6. Campaign; 7. Equipment Selection and distribution; 8. implementation of voting and counting of votes from the election results; 9. implementation of voter registration supervision; 9. controlling</p>	<p>The lack of administrative violations and criminal violations in the Regional Election are given sanctions, due to the weakness of the duties and authorities given by the Law to Bawaslu and Supervisory committee, therefore it is necessary to strengthen the duties and authorities Bawaslu and Supervisory committee</p>	<p>Article 30 Duties and Authorities of Regency/Municipal Supervisory committee: a. overseeing the stages of holding the Election which includes: 1. the implementation of supervision over the recruitment of PPK, PPS, and KPPS; 2. updating of voter data based on population data and the determination of the Temporary Voter List and the Permanent Voter List; 3. nominations related to the requirements and procedures for nomination; 4. process and determination of candidates; 5. implementation Campaign; 6. Equipment Selection and distribution; 7. implementation of voting and counting of votes from the election results; 8. implementation of voter registration supervision; 9. control the entire supervision counting process voice;</p>
	<p>whole surveillance vote counting process; 10. delivery of ballots from TPS level to PPK; 11. vote recapitulation process conducted by Provincial, Regency and City KPU from all Districts; 12. implementation of counting and re-voting, follow-up elections, and follow-up elections; and 13. the process of implementing the determination of the results of the Election of the Regent and Deputy Regent as well as the Mayor and Deputy Mayor. b. receive reports of alleged violations of the implementation of laws and regulations regarding elections; c. resolve findings and reports of election violations and election disputes that do not contains elements of a criminal act; d. submit findings and reports</p>		<p>10. delivery of ballots from TPS level to PPK; 11. the vote recapitulation process conducted by the Provincial KPU, 12. Regencies and Cities from all Sub-districts; 13. implementation of counting and re-voting, follow-up elections, and follow-up elections; and 14. the process of implementing the determination of the results of the election of the Regent and Deputy Regent as well as the Mayor and Deputy Mayor. a. receive reports of alleged violations of the implementation of laws and regulations regarding elections; b. resolve findings and reports of election violations and election disputes that do not contain elements of a criminal act and impose sanctions c. conduct examinations, investigations and prosecutions of reports of alleged violations</p>

	to the Provincial KPU and Regency/City KPU for follow-up;		election crime
4	<p>Article 41 Paragraph (1) of Law Number 10 Year 2016: An individual candidate pair may register as a candidate pair for governor/deputy governor if they meet the support requirements provided that (a) a province with a population of up to 2,000,000 people must be supported by at least 10 percent; (b) provinces with a population of more than 2,000,000 to 6,000,000 people must be supported at least 8.5 percent; (c) provinces with a population of more than 6,000,000 to 12,000,000 soul must be supported at least 7.5 percent; and (d) provinces with a population of more than 12,000,000 people must be supported</p>	<p>So that the requirements for individual candidates for the governor and deputy governor elections are not too difficult to fulfill</p>	<p>Article 41 Paragraph (1) of Law Number 10 Year 2016:  Pairs of individual candidates can register themselves as pairs of candidates for governor/deputy governor if they meet the support requirements with the following conditions: (a) provinces with a population of up to 2,000,000 people must be supported by at least 5 percent; (b) provinces with a population of more than 2,000,000 to 6,000,000 people must be supported at least 5 percent; (c) provinces with a population of more than 6,000,000 to 12,000,000 people must be supported at least 4 percent; and (d) provinces with a population of more than 12,000,000 people must be supported by at least 2.5 percent. (e). the amount of support is spread over more than 50 percent of the districts/cities in</p>
	<p>at least 6.7 percent. (e). the amount of support is spread over more than 50 percent of the districts/cities in the province. In addition, this support is made in the form of a letter of support accompanied by a photocopy of your ID card or certificate of identity in accordance with the laws and regulations.</p>		<p>province. In addition, the support is made in the form of a letter of support accompanied by a photocopy of your ID card or certificate of identity in accordance with the laws and regulations.</p>
5	<p>Article 41 Paragraph (2) of Law Number 10 Year 2016 Candidates can register themselves as a candidate for regent/deputy regent or the mayor/deputy mayor if it meets the requirements for support provided that (a) a district/city with a population of up to 250,000 people must be supported at least 10 percent; (b) districts/cities with a population of more than 250,000 up to 500,000 souls must be supported at least 8.5 percent;</p>	<p>So that the requirements for individual candidates for the Regional Head Election of Regent/Deputy Regent/Mayor/Deputy Mayor are not too difficult to fulfill</p>	<p>Article 41 Paragraph (2) of Law Number 10 Year 2016 Candidates can register themselves as pairs of candidates for regent/deputy regent or mayor/deputy mayor if they meet the support requirements with the following conditions: (a) districts/cities with a population of up to 250,000 people must be supported by at least 5 percent; (b) regencies/cities with a population of more than 250,000 to 500,000 people must be supported at least</p>

	<p>(c) districts/cities with a population of more than 500,000 up to 1,000,000 people must be supported at least 7.5 percent; and (d) districts/cities with a population of more than 1,000,000 souls must be supported at least 6.5 percent." (e) the amount of support is spread over more than 50 percent of the total sub-districts in the district/city. In addition, the support is made in the form of a letter of support accompanied by a photocopy of an ID card or a certificate of identity in accordance with the laws and regulations, and the support requirements as referred to are only given to one pair of individual candidates.</p>		<p>at least 5 percent; (c) regencies/cities with a population of more than 500,000 to 1,000,000 people must be supported at least 4 percent; and (d) districts/cities with a population of more than 1,000,000 people must be supported by at least 2.5 percent." (e) the amount of support is spread over more than 50 percent of the total sub-districts in the district/city. In addition, the support made in the form of a letter of support accompanied by a photocopy of an ID card or certificate of identity in accordance with the laws and regulations, and the support requirements referred to are only given to one pair of individual candidates.</p>
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## CONCLUSION

The existence of weaknesses in the legal substance, legal structure and legal culture in the current Regional Head Election regulations, it is necessary to immediately reconstruct values, namely the incumbent regional head candidate resigns when. The nomination for regional head elections is determined by the KPUD, and the requirements for administrative support for individual regional head candidates are made proportionally and fairly, while the reconstruction of regional head election regulatory norms is based on Article 70 paragraph (3) of Law 10 of 2016 regarding the provisions for campaign leave for incumbent candidates, in Law No. 10 of 2016 needs to be regulated that the incumbent regional head candidate resigns during his candidacy, reformulation of money politics offenses to better reach the modes of money politics in regional head elections, Article 30 of Law 10 of 2016 concerning strengthening of general election law enforcement agencies, and Article 41 paragraph ( 1) and (2) Law Number 10 of 2016 concerning the ease of requirements for individual candidates.

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