Direct Election of Regional Heads and the Problems of Its Implementation in Indonesia
(A Study in the Perspective of Indonesia 11945 Constitution)

Muin Fahmal¹, Said Sampara², Hamza Baharuddin³, Rusmulyadi⁴
¹²Profesor of Law, Department Constitutional Law, Faculty of Law, Universitas Muslim Indonesia
³Asisten Profesor of Law, Department Contitutional Law, Faculty of Law, Universitas Muslim Indonesia
⁴Doctoral Student, Department Contitutional Law, Faculty of Law, Universitas Muslim Indonesia, and Lecture Faculty of Law, Universitas Ichsan Gorontalo

Abstract: Direct election of regional heads as a way of actualizing democracy in Indonesia is a part of the system in organizing the government administration in Indonesia. The election is aimed to elect regional heads, which used to be an indirect election type. But on its way, a variety of issues came up with the implementation of direct election of regional heads. To address the issues the government is required to reconstitute the implementation of direct election of regional heads in Indonesia; the government should make improvements on regulations that set the whole implementation of direct election of regional heads.

Introduction

The direct election of regional heads and deputy regional heads has been performed since December 9, 2015. The election is a process that involves the public or people in voting independently.¹ This is an undeniable consequence that has to be taken due to the type of our country. Laica Marzuki stated² that Indonesia is a unitary country in a republic form, which is run on the basis of decentralization (local governance) with the widest possible autonomy.

The regional heads election is intended to elect regional heads, governors for province level and regents/mayors for regency/city level. Electing regional heads for province level is simply the same as that for regency/city level, that is, through direct election by the people.³ This is stipulated in Act No. 9 Year 2015 About Local Governments, Second Amendment of Act No. 23 Year 2014.

In its implementation, the democratic system embraced by Indonesia has not been free from various forms of obstacles that generated skeptical attitudes among the communities at large. The rampant problems that have arisen along the journey of the democracy in the country were direct implications of the various obstacles.⁴ In line with the phenomenon, Oki Wahyu Budijanto⁵ claimed that based on empirical data, the election of regional heads had direct positive impacts on the political rights of citizens because the regional heads elected appeared to be socially closer to communities, could listen to and accommodate the aspirations of voters, and in fact, they were better than those elected by Parliament members. Another positive impact of the direct election was that the surveillance space of society was more open, so that the development they made would look more real.

According to H. Djauhari, direct election has not brought about ideal regional heads as there have been several regional heads that were committed to crimes of legal cases of corruptions. Such the situation could just happen because the process of democracy in the elections began with political negotiations between candidate regional-heads and their endorser political-parties on one hand and their voters on the other hand.⁶ A similar view is expressed by Iza Rumesten RS⁷ who stated that to the implementation of direct election a lot of deviations have happened, which hurt the noble idea of constitutional life and damaged the eastern political-culture prevailing in the country because in winning the election every candidate used any possible way.

Furthermore, the recruitment system on candidate regional-heads (governors, mayors, and regents) has been transactional; only those who have strong financial capital and high popularity that were taken into consideration by political parties, and the cost to win the election is enormous. Accordingly, based on such the phenomena, the election has appeared to be an arena for power rather than leadership competition among candidates in developing their regions as the integral part of the Republic of Indonesia.

This is the implication of the reform era where the democracy was directed to a participatory democracy or direct participation...
because, one of some other reasons, a lot of political officials could not have been able to carry out their responsibilities properly so that their legitimacy became weak. Also, they lost trust from people. This condition caused the recruitment system of political officials to be changed to a direct democracy system. That is why nearly all the recruitments for political positions are held in the format of the system.

Based on the description above, we were interested in discussing the implementation of the direct regional-head election and its problems in Indonesia in the perspective of Constitution of the Republic of Indonesia Year 1945.

**DISCUSSION**

1. Implementation Problems with Regional-Head Election in Indonesia

Retro Saraswati set forth that the current portrait of direct regional-head election indicated an inability to lead people to a welfare state. On the contrary, it contributed to moral destruction of the elected officials and their people. To address the critical issue, the country should immediately take a serious action for political alteration, changing the direct regional-head election to the indirect one. In the perspective of democracy, indirect regional-head election is in line with the concept of democracy existing in Indonesia and in accordance with the law politics for creating social welfare so that the laws of regional-head election would be more meaningful for the people of Indonesia.

Various problems that have happened, among others, were that the implementation of direct regional-head election was considered ineffective; the emergence of distortions since community members were polarized as a result of votes given to certain candidate that potentially causes horizontal conflict; and the creation of pragmatic society in democracy as the impact of "money politic". All the issues have created a discourse that requires a “comeback” to the representative democracy, that is, election of regional heads by the House of Representative.

If we examine, we would find that the direct elections can nourish corruption in the middle of society as money politics are performed by candidates and their campaign team. They even do not hesitate to expose themselves with bombastic promises merely for the purposes of getting votes as many as they expect from their constituents.

The very common problems that usually happened in the election events were negative campaigns and money politics. Negative campaigns were usually carried out by candidates that felt to be lost to their competitors. Money politics was often done by certain candidates who felt that they could buy the votes of voters and ‘shut them up’ with money. Money politics in a subtle definition of the local people’s perspective is that before and after the election day, voters ask for money as a pay back. Money politics in a harsh definition from the viewpoint of elites is associated with strong financial back-up candidates who intentionally and explicitly spend their money for the purpose of winning votes, during the stages of campaign and voting day.

Didik Suprianto asserted that there are some reasons why money politics was put in practices in a massive way. First, the competitiveness level among candidates is very high. While being supposed to keep an eye on each other in order not to breach the rules, they in fact perform money politics. Second, the number of both local and foreign supervisors is not enough. Third, the participation of local media to uncover money politics is still low. Most of them avoid being called participants if they openly present the issue to the public. And, they lack of source since community members are quite reluctant to make comments.

The other problem is the recruitment of prospective regional head and deputy regional-head that is merely based on popularity. Nominees with an artist, musician, or comedian background are assumed to be capable with winning a large number of votes. It is clear that such a recruitment is only for securing a position; quality and professionalism are out of question.

Most or perhaps all the pairs of regional head and deputy regional-head are nominated by joined different-parties. They usually split up on their way because the recommending parties are under conflicts of interests against each other at a point of time. The victory of such a pair of regional head and deputy regional-head tends to be a "temporary victory."

In the context of vulnerable communities in conflict areas in Indonesia, regional-head election has been often tinged with violent conflicts. Unfortunately, the government did not try to address them through a systematic handling of sociological factors on violent conflicts. Consequently, violence frequently escalated and caused serious damages to public facilities and casualties in the election events in the areas of vulnerable communities.

The conflicts taking place in regional-head election events are usually subject to the dissatisfactions of candidates with the results. The dissatisfactions are commonly associated with cheatings made incumbent contestants, unfairness of the local general election commission, and list of voters. Not only that, the central government is another source of conflict. The reason is that the government sluggishly anticipated conflict factors.
For example, the government does not make early attempts in solving budget problems for running election events. As a result, the stages of the election is difficult to be carried out in a good quality. The final updating of voters list, for example, cannot be guaranteed perfect for the election while it often triggers conflicts. Another potential conflict source is issues of tribe, religion, and race in the community.

When a similar case was left drawn-out, the rejection to election results in the form of demonstrations will also take place in the province and regency/city level. And, as a result, the problems of regional heads and deputy regional-heads election will never completely be finished.

2. Ideal Concepts for Regional-Head Election in Indonesia

1945 Constitution (UUD NKRI 1945) in amendment of Article 1 Paragraph (3), “Indonesia is a law country.”xi The elections of regional heads as regulated in Chapter 18 Article (4) of the 1945 Constitution is one of the means of the embodiment of people’s sovereignty in order to produce a democratic local-government. Indicators of “democratic” in the execution of election can be measured from obedience to the principles of ‘direct’, ‘general’, ‘free’, ‘confidential’, ‘honest’, and ‘fair’ as stipulated in Chapter 22E Article (1) of the 1945 Constitution. It can also be measured from the independence and integrity of the organizers of election, which affect the process of organizing and results of the election itself. xiii

Nanik Prasetyoningsihxiv in her article, claimed that in addition to objectives and democratic state of an election, there are also functions of the election that cannot be separated from each other, namely: (1) a means of political legitimacy, especially for the government and political system in obtaining authority and political power source; (2) a representatives house function. Referring to her, we agree that elections are the source of authority and political power. And, it is very reasonable that performing elections will produce a result of election.

In various literatures, the concept of democracy was derived from Greece. It is interpreted as the power is from the people, by the people, and for the people, which etymologically consists of two root words, that is, demos that means people and kratos that means power. Thus, in terminology, it refers to the state of a country in which sovereignty and supreme power are in the hands of the people. The concept of democracy is advocated by almost all countries in the world. That the concept of democracy is widely accepted is based on the conviction that it is a system of governance that are the most superior compared to other governance system. One of the main manifestations of democracy is implementing regional-head elections in electing governors/deputy governors, regents/deputy regents, and mayors/deputy mayors as the implementation of the mandate of Law Number 32 Year 2004 concerning Local Government that is deemed capable of expressing and instituted the wills of people on the basis of the recognition that sovereignty is in the hands of people to choose heads of local government, that rules and lead the development their region. This is clearly contained in Chapter 18 Article (4) of the 1945 Constitution which States “governors, regents, and mayors are consecutively the government heads of province, regency, and city that are elected democratically.”xv

In implementing democracy there are some principles that should be obeyed. They are division of powers, free general elections, open management, individual liberty, free judiciary, recognition of minority rights, government by rules of laws, free press, political parties, consensus, approvals, constitutional government, provisions on democracy, supervisions on government administration, the protection of rights, majority government, expertise competition, political mechanism existence, nation’s free policy, government that prioritizes consensus.

The principles of democracy mentioned above are then put into more practical concepts that can be measured and characterized. These traits are made into parameters for measuring the level of implementation of democracy applied in a country. These parameters include the four aspects.

1. Establishment of a nation. The process of forming power will largely determine the quality, character, and a pattern of relationships that will be developed. The election is believed to be one of the important instruments that can support the process of the establishment of good governance.
2. Basis of nation’s power. This issue is related to the concept of legitimacy of power and its accountability directly to the people.
3. Order of nation’s power. The power of nation should be put in practice in a distributive way. This is aimed at preventing power from being concentrated in only one hand.
4. Control over the people. Community control is performed in order that the policy taken by a government or nation is in accordance with the wishes of people. The whole steps is the effort of realizing democracy and people sovereignty in a government system.

In the system of people sovereignty the supreme power is in the hands of the people. In fact the power comes from the people, for the people, and managed by the people. Democracy cannot only serve as a mere rhetoric. Democracy is not only associated with institutionalizing lofty ideas.
about living an ideal institutional life in a country, but it is also a question of tradition and an egalitarian political culture in the reality of life in diversity and appreciate differences.

For a local level, the implementation of direct election of regional heads and deputy regional heads is one of the efforts in creating a democratic government. Democracy is an important aspect related to governance by hierarchies of power contained in a political system of a nation. This means that there will be a national political system that contains local political subsystems under a frame of national system. The local democratic election does not mean that there is a determination of area of democracy enforcement or a difference of democracy from its parent. Local democracy is intended as part of a whole picture of democracy in Indonesia in selecting political elites in a local government. Local democracy is a part of a nation’s political subsystem, and the degree of its implications is within the corridor a local government.

The direct election of regional head should turn to be a momentum of democracy, and is not only a ritual in succession to grab power. It should serve as a learning and political education among grassroots community. Accordingly, it is expected that the process of democratization in the future is not experiencing serious barriers. Ideally democratization should not only be an administrative requirement in a nation’s system. It has to be a pillar and a sturdy spirit in every transition of leadership/power. Some people judge that our society has been able to run democratic values. The proof is that presidential direct-elections ran smoothly without causing political violence among grassroots. This is certainly a positive reference for a democracy culture where Law No. 8 Year 2015 was made a progressive basis in running local democracy events of regional-head direct elections. On one hand, the direct election of regional heads is a means of strengthening local democracy, but on the other hand the political culture of local people does not support dependency on our national politics; and the truth about this cannot be denied. Consequently, the election of regional head has not gone along with the original ideas because there was intervention from the central government.

Here lies the question that requires a thorough answer to why should there be excessive political interventions, which quite often trigger horizontal conflicts at local level. Independence and the people’s freedom of speech frequently experienced blockage due to dominant roles of political parties at local level. As a consequence, people become apathetic towards the elections of regional heads. This is indicated by high percentage of people/constituents that did not vote in the elections since their political option was under the intervention of political parties. Whether or not people participate in the elections of regional heads is indeed not a standing-alone independent variable. It is clearly affected by such other factors as apathetic, passive, and pragmatic attitudes. Those with such attitudes perceive that participating in or missing the election will not affect the state of their life. In fact, voters and candidate regional-heads are inseparable parties and should collaborate in developing their region. That is why, one of the aspects considered important is making people aware that the quality regional-head election depends on their and candidate’s political motivations in actualizing the goals of local autonomy. Direct election of regional head is not merely a political competition to win regional head position. It has an implication on the welfare of people; it serves as a challenge in maintaining democracy for people's welfare. Grounded programs that suit the context of local development must not be ignored by any candidates; they have to refer to them as the starting points in developing their region and empowering the local strengths.

In addition, the credibility of the election of regional head is universally characterized by regulations and laws that govern the main issues in implementing the election, for example, who is eligible to vote and nominated, what is the role of political parties, how the funding for elections including public financing of elections is arranged, campaign rules, voting system and vote calculation, sanctions against violations and crimes in election. Another important issue is the organizing committee of election, for instance, General Election Commission that is expected to be able to execute its duties independently and competently. Furthermore, in order to overcome various problems with the elections, the role of political parties is extremely urgent to be looked into. Assuming their functions for socialization, education, political participation, and political recruitment, political parties serve as an effective medium in triggering local people's political participation. Political parties must be able to provide maximum political education for people in order not to get involved in the turmoil of problems that frequently stain regional-head election.

Good political education from various agents on the elections will also result in good contribution to the political participation of people. If political parties select their candidates for the regional-head election by an objective manner and the candidates they nominate suit the people’s need, the people will willingly participate in the election. By this way, horizontal conflicts that often came along with election events would be minimized. People will not likely be provoked with
doing anarchist actions that can undermine democratic processes; anarchistic actions usually burst from situation where people’s aspirations are castrated. That is why political education for cadres, candidates, and constituents is a very appropriate method in strengthening democracy process at local level. Conducting the election of regional-head must be seen as a means of realizing and keeping the existence of a democratic local government. Therefore, addressing various problems that have happened so far and are considered the weaknesses of the election is very crucial for the sake of keeping the existence and integrity of people sovereignty at local level.

**Conclusion**

Based on the discussion above, it can be concluded that the various problems occurred to the implementation of regional-head election in Indonesia is an iceberg phenomenon that will never be completely settled. The government and political parties are required to work together to redesign the democratic system of regional-head election in Indonesia because the election should be able to produce regional head that can bridge the interests of communities of the region. Political education needs to be improved for local people in order that regional-head election can be carried out in a dignified way.

**Bibliography**


Hardianto Djanggih and Kamri Ahmad, The Effentiviness of Indonesian National Police of Investigation Function in Banggai Regency Police (Investigation Case Year 2008-2016, Jurnal Dinamika Hukum, Volume 17, Nomor 2, 2017; Purwokerto: Faculty of law, Jenderal Soedirman University.


Sarundajang, Pilkada Langsung Problematica dan Prospek (Jakarta: Kata Hasta Pustaka, 2012)


Rudy, Karakteristik Sengketa Pemilukada Di Indonesia Evaluasi 5 Tahun Kewenangan MK Memutus Sengketa Pemilukada, Jurnal Konstitusi, Vol.11, No.1.2014, p.199