



## The esenci of direct of regional head in Indonesia

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### Abstract

The purpose of this study is to analyze and know and understand the design of changes in the regional head selection system directly simultaneously based on the principle of fairness and honest. The research method used is purely normative legal research or doctrinal law research (normative legal research). The results showed the design of changes in the electoral system of regional heads directly simultaneously in the application of honest and fair principles in campaign activities, namely containing a standard description of the election of regional heads as channelling the aspirations and votes of the people who are democratic, objective, professional, proportional, transparent, accountable, fair, orderly, safe and useful, as the embodiment of the constitution and the 1945 Constitution as mandated in Article 18 Paragraph (A).

**Keywords:** election, regional head, and simultaneously

### Introduction

Indonesia is a sovereign state of the people and including a modern and advanced Democratic State, elections are the main mechanisms that must exist in the stage of state administration and the formation of the government. Elections are a tangible form of people's sovereignty as well as a concrete manifestation of people's participation in the implementation of the State. Therefore, the system and the implementation of elections are always the main concern. The spirit of government from, by, and for the people is expected to be truly realized through the structuring of the system and the quality of elections.

To create elections that are following the expectations of the implementation of the sovereignty of the people, our constitution outlines some electoral principles that become guidelines and instructions in their implementation. The 1945 Constitution outlines the principles of elections, namely, honesty and fairness. One of the formulations in the 1945 Constitution, has asserted the State of Indonesia as a democratic state and is a state of law. As stated in Article 1 paragraph (2) of the 1945 Constitution" and paragraph (3). Thus the owner of the highest power in the country is the people. The enactment of the Constitution of the State of Indonesia is sourced from the people. Institutional and state organizing is a reflection of the interests of the people. In the constitutional system based on the 1945 Constitution, the exercise of people's sovereignty is channelled and held according to the constitutional procedures established in the law and constitution.

At the beginning of the reform era, the administration was directed to realize a democratic and decentralised government. Therefore, changes have been made to the laws of the political field and the laws of the field of government. To the law of the field of government, changes have been made to the law on local government, so that the process of organizing the government changed from centralistic to decentralists, as well as changes to the law on Regional Head Elections.

People today are familiar with the process of selecting regional heads conducted directly. different from the

condition of the government of the new order period because at that time the election of the regional head was carried out by the legislature at its level.

The selection of regional heads directly for the first time is stipulated in Law No. 32 of 2004 on Local Government, an indicator of the democratization process in Indonesia. The journey of learning democracy in Indonesia before the independence period until now. gave birth to a new system, dissatisfaction (lack) Law No. 32 of 2004 on regional autonomy gave birth to a new conception of the Law to create a more democratic order.

In the Republic of Indonesia which adheres to the Presidential system and in the implementation of Local Government using the principle of decentralization and auxiliary duties, the position of Regional Head and Deputy Head of Region is important in making public decisions. In the era of regional autonomy, the development of democracy and regional public participation is an unavoidable consequence, it is expected that democracy at the local level, can be the entrance for regional progress, because with the election of regional heads and deputy heads of regions directly the political legitimacy of the Regional Head is great.

The democratic process in the region is expected to generate high and critical political participation of local communities, it is also expected that there will be a strong 'civil society' in the region. If democracy goes well then the principle of "check and balance" will automatically occur. For the democratic process to run well the role of regional head election organizers (Electoral Commission Province, Regency/City and Supervisory committee) is expected to always stick to the laws and regulations and enforce candidates fairly and equally. The ranks of local government are also expected to support the smooth implementation of regional head elections and be neutral not to side with one of the candidates.

The direct selection of regional heads and deputy heads of regions has become an integral part of the development of democracy in Indonesia. Consolidation of democracy at the local level becomes a crucial part in realizing democratic

national consolidation thus demonstrating its role and function as an important part in the democratization process in Indonesia. There are several problems, among others, the problem of the legal framework that still leaves a variety of confusion and obscurity for organizers, participants, and voters in practice often cause conflicts and security disturbances in the field.

Contemporary Indonesian political history records that whenever regional head elections are held, there are always protests that doubt the process and results of the regional head elections. This happened in the elections during the new order, but also the elections at the beginning of the reforms in 1999 until the legislative elections in 2014 and the presidential elections in 2014 even the 1955 elections known as the cleanest elections were not quiet from protests. The implementation of direct elections of regional heads (regional elections) throughout 2005, adding to the long list of public dissatisfaction protests against local elections. The emergence of protests against the process and the results of the election on the one hand, due to the many violations of election rules that are not resolved completely, on the other hand, due to feelings of unfair treatment by the organizers of the regional head elections.

In the practice of the regional head election system, following the prevailing laws and regulations, the recruitment system of regional heads that are open democratically on a direct basis is also accompanied by the political practice of money. It has become a public secret, that regional head candidates always sell money to buy votes of members of the Regional People's Representative Council in elections, as well as to finance social groups to create public opinion. This continues today, namely the candidates of regional heads always sell money to buy the votes of the electorate. It violates the provisions of the article above concerning elections conducted democratically based on the principle of direct, public, free, confidential, honest, and fair.

The organizer of the selection of regional heads directly in some regions has markedly encouraged social changes both structural and functional in the order of life of the Indonesian people. The process towards transformation/changes through the regional head election organizers directly as if they have to go through a process of dysfunctional or functional conflict. Changes that occur after the election of the head of the region directly are not uncommon in the accompanied by conflict situations that have a wide impact on the social life of the community.

The implementation of regional head sorting from 2005 to 2015 was carried out simultaneously, many-coloured by protests and even riots, in various regions, masses of supporters of the defeated candidates launched anarchist actions because they felt cheated by other participants and by organizers in various forms of fraud, including fraud in the form of money politics.

Protests of dissatisfaction over the process and results of the elections that are backgrounded by the many violations that can not be solved, well and the feeling of having been treated unfairly by the organizers of the regional head elections, indicate a problem of law enforcement in every regional head election. If not addressed immediately, on the one hand, it will continue to provoke protests from those who feel violated their constitutional rights, cheated, or treated unfairly; on the other hand, the protests that emerged could ultimately legitimize the election results.

To realize honest and fair elections and also to avoid the delegitimization of regional head elections in the future, the problems of law enforcement of regional head elections must be resolved comprehensively. The necessary step is to identify the causes of the emergence of law enforcement problems; furthermore, a comprehensive solution is sought to overcome the problem so that finally a system of law enforcement of regional head elections that can guarantee the implementation/implementation of honest and fair elections.

Based on the search, the practice of organizing regional head elections has so far raised problems in the field of money politics in regional head elections that are allegedly caused by several factors: First, the limitation of the occurrence of uncertain violations that lead to multi-interpretation that leads to controversy; Second, the mechanisms and procedures for handling violations are not clear so the handling is not easy; Third, election law enforcement agencies are not well prepared so that the oversized in handling cases that occur; Fourth, legal sanctions for violations of regional head elections are so mild that it does not give a deterrent effect to continue to violate the law; Fifth, the need to improve or renew and complete the existing legal and statutory pitfalls; Sixth, improving the quality of human resources of law enforcement both in terms of morality and intellectual capacity, because not a few law enforcement exists today.

International democratic election standards state that honest and fair elections can be achieved when there is a legal device that governs all election process while protecting the organizers, participants, candidates, voters, monitors, and citizens in general from fear, intimidation, violence, bribery, fraud, and various other fraudulent practices that will affect the outcome of the election. Therefore, the election of an honest and fair regional head requires electoral legislation and the apparatus in charge of enforcing the election legislation.

The occurrence of violations of regional head election law that leads to criminal acts as occurred in some areas. Based on the background of the issue expressed, it can be emphasized that the basis of the principle in this research is about system reform, regulation and the nature of the application of honest and fair principles in the legislation governing the implementation of regional head elections directly, especially in campaign activities and campaign fund reporting. From the descriptions above, it is felt urgent to analyze and know and understand the design of changes in the regional head election system directly simultaneously based on the principle of fair and honest.

### **Method of Research**

The research method used is purely normative legal research or doctrinal law research. This normative legal research is directed at the study of the nature of the regional head election system as well as the legal substance of various laws and regulations in Indonesia that govern the principle of fairness and honesty on the selection of regional heads. The focus of the study is the substance of the law in the form of legal norms or rules relating to the principle of fairness and honesty in the arrangement of campaigns and campaign funds in the election of regional heads.

The data obtained is analyzed qualitatively and quantitatively by using normative juridical analysis methods to examine the substance of legal provisions governing the selection of

regional heads directly and synchronizing the substance of the provisions of the law both vertical and horizontal. Qualitative data encountered will be analyzed qualitatively by using description and logical narratives against each normative symptom to review and reveal the reality of the elaboration of honest and fair principles in various regional head election regulations.

## Research Result and Discussion

### Direct Simultaneous Regional Head Selection System based on Honest and Fair Principles in Indonesia

Elections are a means of the exercise of people's sovereignty that is carried out directly, publicly, freely, confidentially, honestly, and fairly in the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia in 1945.

Elections in Indonesia were first held in 1955 to elect members of the House of Representatives and the Regional People's Representative Council followed by 118 political parties, organizations, groups and individuals. Then in the era of the new order elections were held in 1971, 1977, 1982, 1987, 1992 and 1999 to elect members of the House of Representatives and the House of Regional Representatives. The representatives of the people then elected presidents, governors, regents and mayors known as representative democracy.

Then since the reform era, elections were held in 2004, 2008 and 2014 to elect members of the House of Representatives, Regional Representative Council, Provincial People's Representative Council, Municipal/District People's Representative Council. Along with the birth of reforms, there are many demands to change the electoral system from a representative democracy to a direct democracy where people can directly elect presidents, vice presidents, governors, mayors and regents. Law No. 22 of 1999 on Local Government grants greater powers to local parliaments, including power in regional head elections (Regional Elections).

In other words, Law No. 22 of 1999 on Local Government only focuses on decentralization but is not accompanied by democratization. However, in its development Law No. 22 of 1999 on Local Government is considered to have many weaknesses and needs to be revised. The completion of Article 18 of the Constitution of the Republic of Indonesia in 1945 on the second amendment of 2000, further encourages the revision of Law No. 22 of 1999 on Local Government, especially regarding direct elections. In the process of discussion of Article 18, especially paragraph (4) of the 1945 Constitution, the People's Consultative Assembly agreed to open the space of freedom for the region in the process of regional head selection.

Issued Law No. 32 of 2004 on Local Government. The birth of Law No. 32 of 2004 on Local Government is motivated by imperfections of Law No. 22 of 1999 on Local Government and Law No. 25 of 1999 concerning Financial Division between Central and Regional.

The shortcoming contained in Law No. 25 of 1999 is the need to regulate the electoral system of regional heads and deputy regional heads directly because it is believed that direct elections are the most democratic way to truly guarantee the implementation of people's aspirations. Article 56 paragraph (1) of Law No. 32 of 2004 concerning Local Government states that the Regional Head and Deputy Head of Regions are elected in a candidate pair that

is implemented democratically based on the principle of direct, public, free, confidential, honest and fair.

The selection of regional heads directly has become a new development in understanding "democratically elected" as specified in Article 18 paragraph (4) of the Constitution of the Republic of Indonesia in 1945. Therefore, if Law No. 32 of 2004 on Local Government gives a wide space to direct elections by the people this refers to Article 18 paragraph (4) of the 1945 Constitution. From a sociological perspective, there is a turbulent and turbulent social insistence during the reform era that demands democratization and transparency in central and regional government. One form of democratization is the implementation of direct elections.

Thus elections are directly a representation of the implementation of democracy at the local level in determining the leader or regional head and deputy head of the region determined by the local people themselves, as the essence of democracy is sovereignty is in the hands of the people. Direct elections are believed to be a democratic path in electing regional heads after a long time in the confines of the New Order Regime that does not give the people the opportunity to determine their leader.

Through direct elections, the people can directly determine the regional leader. So direct elections are also a tangible manifestation of the principle of responsiveness and accountability because regional heads must be directly responsible to the people. However, some experts note that Law No. 32 of 2004 on Local Government has many weaknesses in which the role of political parties is very dominant in determining candidates, without going through democratic mechanisms. The result is through the Decision of the Constitutional Court No. 5/PUU-V/2007 opened the opportunity of individual candidates as one of the entry points in addition to the mechanism of candidacy through political parties.

Indonesia's political system entered a new phase with the issuance of the Regional Head Election Law passed on September 26, 2014, to change the way Indonesians democratize, especially in determining regional leaders. The direct electoral system by the people was in force for ten years, changed to regional head elections by the Regional People's Representative Council. The old system, which was considered democratic, turned out to have a bad impact on the nation. The costly system is said to have spawned corrupt regional leaders. The new system, which is also claimed to be democratic, is believed to be more guaranteed to give birth to mandated governors and regents/mayors, although it has been criticized as a democratic setback.

As it is understood that no system is ideal, let alone to apply all the time. Because the system adapts to the situation of the times, adapts to traditions, socio-cultural-economic systems, and many things continue to transform. Similarly, the regional head election system has continued to metamorphose since Indonesia's modern history.

### Elections According to Various Laws and Regulations a. Constitution of the Republic of Indonesia year 1945

In Article 1 paragraph 3 of the 1945 Constitution, it is said that "the state of Indonesia is a state of law". According to Julius Stahl one of the important elements of the concept of state law or *rechtsstaat* is that the government must be based on the law which means that the law must be a source of legitimacy of any state act of state law. The election of

the Regional Head is a fundamental consequence of the implementation of Democracy. In Article 18 paragraph 4 of the second amendment. As is customary in a constitution, the 1945 Constitution only provides an outline of the Election of Regional Heads.

According to Government Regulation No. 6 of 2005 concerning Election, Ratification, Appointment and Dismissal of Regional Heads and Deputy Heads of Regions Juncto Government Regulation No. 49 of 2008 concerning Amendments to Milking Regulation No. 6 of 2005 in Article 1 paragraph (1) Election of Regional Heads defined as: "Means of Implementation of People's Sovereignty in Provincial And/Or District/Municipal Areas Based on Pancasila And Constitution of 1945 To Elect Regional Heads and Regional Heads".

### **Elections According to Law No. 32 of 2004 on Local Government**

The birth of Law No. 32 of 2004 on Local Government, brought about a fundamental change in terms of regional head elections. Regional heads according to Law No. 22 of 1999 on Regional Autonomy, are elected and responsible to the Regional People's Representative Council, while according to Law No. 32 of 2004 on Local Government, regional heads and deputy heads of regions are elected in one pair directly by the people in the area concerned. In this case, the spouses of regional head candidates and deputy heads of regions can be nominated either by political parties or a combination of political parties of election participants who gain a certain number of seats in the Regional People's Representative Council and or gain vote support in legislative elections in a certain number of.

The implementation of this direct election has covered the shortcomings that existed in the previous law. As an implementation of the amendment of the Constitution of the Republic of Indonesia, there has been a change in the system of governance of the country where the President is directly elected by the people, as well as the Regional Head is also directly elected by the people. The implementation of direct elections according to Law No. 32 of 2004 on Local Government, still involves political parties, in contrast to Law No. 22 of 1999 on Regional Autonomy, political parties are outside parliament and used as the legalization of candidacy. This method is used to avoid the existence of political party deals in the Regional House of Representatives and to avoid the practice of Corruption, Collusion and Nepotism.

### **Elections according to Law No. 22 of 2014 concerning The Election of Governors, Regents and Mayors**

The birth of Law No. 22 of 2014 on The Election of Governors, Regents and Mayors, is a correction to the lack of implementation of local elections conducted directly.

Based on the evaluation of the election of the governor/deputy governor, regent/deputy regent, mayor/deputy mayor directly so far shows the fact that the costs incurred by the State and by the spouses of candidates to organize and follow the election of governors/deputy governors, regents/deputy regents and mayors/deputy mayors directly is very large and potentially on increasing corruption. The Interior Ministry recorded about 330 or about 86.22% of regional heads caught up in corruption cases.

The existence of Law No. 22 of 2014 concerning the

Election of Governors, Regents and Mayors, has resulted in changes in the mechanism of direct elections by the people to be indirectly through the Regional People's Representative Council. Improvement of the provisions of the legislation governing the election of governors, regents and mayors through the Provincial People's Representative Council and the District/Municipal People's Representative Council is intended to place the mechanism of democratic elections of governors, regents and mayors and strengthen efficient and effective local governance in the construction of the Government System of the Unitary State of the Republic of Indonesia based on the principle of decentralization.

According to Article 3 of Law No. 22 of 2014 concerning the Election of Governors, Regents and Mayors, governors are elected by members of the Provincial People's Representative Council democratically based on free, open, honest, and fair principles. While the Regent and mayor are elected by members of the Regional People's Representative Council district/city democratically based on the principle of free, open, honest, and fair. Local elections are held every five (5) years simultaneously nationally and candidates for governor, regent candidates and mayoral candidates must take the public test.

Simultaneous local elections are intended as a way to eliminate the fraudulent practices of candidates through mass mobilization of voters between regions. The practice that occurred during this time many candidates head of the region who mobilize mass voters from outside the constituency to get the votes of voters. While the public test is intended to give birth to regional heads who have competence, integrity, capabilities and meet the elements of acceptability.

Thus this law closes the chances of a husband, wife to compete in elections and avoid the existence of Corruption Collusion Nepotism. Another thing stipulated in Law No. 22 of 2014 concerning the Election of Governors, Regents and Mayors, is the charging of deputy governors, deputy regents and deputy mayors. The proposal for the position of deputy head of the region is not carried out in conjunction with the proposal of the regional head but is proposed by the regional head no later than fifteen (15) days after the inauguration of the regional head.

It is now stipulated in this law that not all regional heads have representatives and regional heads can have representatives of more than one (1) person. According to the provisions of Article 45 of Law No. 22 of 2014 concerning the Election of Governors, Regents and Mayors, provincial regions with a population of up to 1,000,000 (one) million people do not have a deputy governor, provinces with populations above 1,000,000 (one million) people up to 3,000,000 (three million) have one (1) deputy governor, provinces with populations above 3,000,000 (three million) to 10,000,000 (ten) million people can have 2 (two) deputy governors and with a population of above 10,000,000 (ten million) people can have 3 three deputy governors.

As for districts/cities with a population of up to 100,000 (one hundred thousand) people do not have a deputy regent/mayor, districts/cities with a total of more than 100,000 (one hundred thousand) people up to 250,000 (two hundred and fifty thousand) people have 1 (one) deputy regent/city and district/city with a population above 250,000 (two hundred fifty thousand) people can have 2 (two)

deputy regents/mayors.

Considering the provisions of articles from Law No. 22 of 2014 concerning the Election of Governors, Regents and Mayors, the author notes that the Government wants to correct the shortcomings that existed in the implementation of the previous election system. The government wants to improve the quality of regional head candidates through public tests and provide certain requirements to become a candidate for regional head/deputy head of the region such as having experience in the field of public services. Elections based on Law No. 22 of 2014 on The Election of Governors, Regents and Mayors, have brought opposition from parties who prefer to hold elections directly.

### **Elections According to Law No. 1 of 2015 concerning The Election of Governors, Regents and Mayors**

According to Law No. 22 of 2014 concerning the Election of Governors, Regents and Mayors, which regulates the mechanism of indirect selection of regional heads through the Regional People's Representative Council has received a rejection from the public because the decision-making process does not reflect the principles of democracy. Therefore, the Law was repealed with the issuance of a Replacement Government Regulation Law No. 1 of 2014. Then the Government Regulation in lieu of Law was passed into Law No. 1 of 2015 on the Election of Governors, Regents and Mayors. By analyzing the provisions of Law No. 22 of 2014 concerning The Election of Governors, Regents and Mayors, and Law No. 1 of 2015 on the Election of Governors, Regents and Mayors, it appears that there are several differences between the two provisions.

The substance of Law No. 22 of 2014 concerning the Election of Governors, Regents and Mayors, Law No. 1 of 2015 on the Election of Governors, Regents and Mayors, Election of Regional Heads elected by the Regional People's Representative Council of Regional Heads is directly elected by the people. Voter Committee Members of the electoral committee consists of elements of factions and/or combined factions with the number of each element of the faction and/or a combination of factions of at least 1 (one) person and as many as 3 (three) people District Voter Committee formed by the Electoral Commission/Regional Election Commission supervised by Election Supervisory Board Funding of election activities charged to the Regional Budget Funding is charged to the State Budget and can be supported through the budget State Budget Principles and Principles of implementation of elections conducted democratically based on the principle of free, open, honest and fair elections are conducted in a crisis demo based on the principle of direct, public, free, confidential, honest and fair.

### **Elections According to Law No. 8 of 2015 concerning Amendments to Law No. 1 of 2015 concerning The Establishment of Government Regulation Replacement Law No. 1 of 2014 concerning The Election of Governors, Regents and Mayors (Law No. 8 of 2015)**

The provisions in the Government Regulation Replacement Law No. 1 of 2014 that has been determined to be Law No. 1 of 2015 are felt there are still some inconsistencies and leave some obstacles if implemented, therefore it needs to be refined. Some of these enhancements include:

1. Organizing elections, stages of organizing elections, candidate pairs, requirements of individual candidates,

determination of selected candidates, requirements of candidates and simultaneous voting.

2. Direct Elections as a form of democracy and the sovereignty of the people of Democracy is a form or system of government in which all the people participate in governing by the medium of their representatives, or also called the government of the people.
3. Democracy comes from the Greek language which means government by the people, democracy is not a form of government that arises by itself but grows and develops like all institutions of society. It means evolutionarily. The first known democracy was direct democracy, in which all citizens manifestly participated in deliberations to determine the general wisdom or laws.

Democracy is a concept that means a government in which the supreme power (or sovereignty) is in the hands of the people or it is often also said that democracy is a government by the people or a majority government.

One of the most common definitions of democracy, that democracy is governance by the people where the supreme power is in the hands of the people and is run directly by them or by the representatives they choose under a free electoral system. From this boundary, there are several important elements of democracy, including the element of power exercised directly or through representation, sovereignty in the hands of the people, a free electoral system.

The principle of people's sovereignty and freedom is very important in the conception mentioned above. In addition to the principles, democracy also contains elements of a set of practices and procedures of a long and winding process of institutionalization of freedom. The concept of democracy as a form of government has long been known, which is thought to have been first implemented in ancient Greece, about 2500 years ago.

That understanding can be contradictory or colliding, although it is not uncommon to find a definition that can be drawn as a "common thread". For example, this difference can be observed in the history of Indonesian state regulation since independence can be understood, how democracy became a subject of discussion that is not timeless, until now. Therefore, as seen from various literature, the diverse definition of democracy by experts as well as the choice of definitions by certain countries becomes inevitable.

In practice, democracy is distinguished into two forms, namely direct democracy and indirect democracy. Direct democracy is a democratic system in which all citizens are usually actively involved in the making of decisions or policies produced by the state; they do not represent their views, thoughts, or interests to others on their behalf. Meanwhile, indirect democracy is more common and enforced by many modern countries today. The large population and the vast territory of the country prefer the choice of this model of indirect democracy or representative democracy.

In this model, citizens will choose representatives or officials who will make political decisions or policies, formulate laws and run programs for the public good on their behalf. Citizens represent their interests, aspirations, thoughts, or views to councillors, leaders or officials they choose through elections.

Thus the authority owned by the ruler or the government either to make decisions or government policies and to carry them out is obtained based on the consent of its citizens given through elections. There is no single definition of what democracy is. But some of the following definitions of democracy can help us when talking about elections as a very important political process in our country today. The main procedure of democracy is the competitive selection of leaders by the people they lead.

The most important modern formulation of this concept of democracy was put forward by Yoseph Schumpeter in 1942. In his pioneering study, *Capitalism, Socialism, and Democracy*, Schumpeter stated in detail the shortcomings of what he termed "classical democratic theory" that defined democracy by the terms "the will of the people" (source) and "common good[ the common god]" (purpose). After effectively undermining that approach, Schumpeter put forward what he called "another theory about democracy." Democratic methods," he said, "are institutional procedures for achieving political decisions in which individuals gain the popular vote".

The definition of democracy from the point of view of this procedure provides some benchmarks that allow us to assess the extent to which a political system is democratic, compare systems and analyze whether a system is increasing or diminishing democratically. If in a country there are still restrictions on voting rights on some parties, then the system is undemocratic. Similarly, a system becomes undemocratic if the opposition is not allowed in elections, or the opposition is controlled or obstructed in achieving what it can do, or opposition newspapers are censored or banned, or the results raise questions about the level of competition allowed by the system.

Henry B. Mayo formulated the eight values underpinning democracy:

- a. Institutionalized peaceful settlement of the conflict
- b. Peaceful change in changing society
- c. Orderly succession of rules
- d. Minimum of coercion
- e. Diversity
- f. Ensuring the establishment of justice
- g. Advancing science
- h. Recognition and respect for freedom.

In the implementation of democracy, some principles must be implemented, namely the division of power, a free electoral system, open management, individual freedom, free judiciary, recognition of human rights and minority rights, rule based on law and the freedom of the press. Democracy is a political system in which the highest collective decision-makers in the system are selected through fair, honest and periodic elections. In that system candidates freely compete for votes and almost all adult residents are entitled to vote.

Democracy believes that elections play a vital role in determining the future of the nation. According to Surbakti the purpose of the general election is:

- a. As a mechanism for selecting government leaders and alternative public policy. In a democracy, the sovereignty of the people is highly respected so that it is known spirit from, by and for the people.
- b. Elections are also a mechanism of transferring conflicts of interest from the public to representative bodies of the people through elected representatives or parties

that win seats so that integration or community unity is guaranteed.

- c. Elections are a means of mobilizing, mobilizing or rallying people's support for the state and government by participating in the political process.

The sovereignty of the people became the foundation of the development of democracy and the republic. The people have the highest power with government from, by, and for the people. However, in the implementation of the government, it is impossible to be implemented by the people, so the practice of representative democracy arises. The people are directly involved only in the general election. Sovereignty embraced by Indonesia based on the 1945 Basic Law is the sovereignty of the people as well as the sovereignty of the law as referred to article 1 paragraph (2) of the 1945 Basic Law which states "Sovereignty is in the hands of the people and is exercised according to the Basic Law".

Direct elections are one of the efforts to create a democratic government. When viewed from the sovereignty of the people, direct elections are the embodiment of the return of the "basic rights" of the people in choosing leaders in the region. In this case, the people have the opportunity and sovereignty in determining the leader directly, freely, confidentially, without intervention from anyone. In the democratic process at the local level, it is expected that the choice of leaders in the region also reflects the aspirations of the people.

Direct regional elections not only foster a democratic climate during the electoral process but further provide education for citizens of their rights and obligations as citizens. Rowland says that democracy is not just a process for obtaining information from those who govern.

Real democracy is about "participation". Direct elections are an extension of people's political participation in determining its leader as the embodiment of people's sovereignty and has strong legitimacy. According to I.B.G Suryatmaja M, there are several considerations that underlie direct elections are:

- a. System of government according to the 1945 Constitution gives the flexibility to the region to organize regional autonomy.
- b. In organizing regional autonomy is seen as necessary to put more emphasis on democratic principles.
- c. In the framework of the development of democratic life, justice, equality, community welfare, harmonious relations between the central and regional governments and between regions to maintain the integrity of the Unitary State of Republic Indonesia, the position of the regional head has a strategic role.

The Constitutional Court held that The formulation of "democratically elected" in the provisions of the Regional Head Election also considers the implementation of regional head elections in special and special areas as referred to in Article 18B paragraph (1) of the 1945 Constitution. But cannot be interpreted that direct regional head elections are the only way to use the phrase "democratically elected" contained in Article 18 paragraph (4) of the 1945 Constitution. However, the reality in describing the purpose of "democratically elected" in Article 18 paragraph (4) of the 1945 Constitution lawmakers have chosen the way of regional elections directly. As a consequence, the principles

and institutions of election organizers should be reflected in the implementation of regional head elections.

Based on the Decision of the Constitutional Court it is increasingly clear that what is meant by democratic elections is an election conducted directly. In Indonesia, direct elections have been held since 2005. The legal basis for the implementation of direct elections has been mandated by Law No. 32 of 2004. Direct elections will strengthen the legitimacy of a regional head because he is directly elected by his people. Political elites or political parties can no longer take down a regional head (unless he commits a criminal act and betrays the state or the makar) because he is the people's choice, the people's voice is the people's choice and the voice of the people is the voice of God (*vox populi vox dei*). Therefore a directly elected president has high legitimacy.

But in practice, the implementation of local elections directly provides a loophole and makes notes and considerations by policymakers to restore elections through representation in the Regional People's Representative Council so that the 2014 Election Law was born which received criticism from the public then published Government Regulation Replacement Law by President Susilo Bambang Yudhoyono who cancelled the law. According to the frugal author, the return of the election of regional heads and deputy heads of regions through the Regional People's Representative Council is a setback for the State of Indonesia as a country that upholds democracy. The conduct of local elections directly shows there is an increase in democracy. The level of democracy of a country is measured by how much society plays a role in determining its leader.

Direct elections can provide a space for direct participation of the people to realize sovereignty in determining leaders in the region. This will encourage the realization of a balance between infrastructure and political superstructures. In addition, the implementation of direct elections is also in line with the spirit of regional autonomy, namely recognition of the aspirations of the community to determine its fate. In addition, direct elections can improve the quality of accountability of political elites and can create political stability and effectiveness of government in the region. The direct electoral system will also provide opportunities for the public to actualize their political rights freely without being influenced by the political elite.

Based on the description and explanation above, it seems clear that concerning elections in Indonesia is developing and very dynamic, starting from the dutch east indies era until now, namely saman reform in Indonesia. The development of the regional head election is in line with the development of the law in the form of legislation.

If seen further from the legislation on elections since before independence until now, elections are directly able to create a democratic government and as a step to realize the sovereignty of the people. Because indirect elections people can use their political rights and choose the candidate of the regional head according to his choice.

The Local Government Law No. 5 of 1974 which was later replaced by Law No. 22 of 1999, and Law No. 22 of 2014 in which regional head elections are conducted through a representation system, does not give space to the people as the highest sovereign holders. While Law No. 32 of 2004 which has been replaced by Law No. 23 of 2014 on Local Government, as well as Law No. 1 of 2015 as amended by

Law No. 8 of 2015, has provided space for the people to choose the head of the region directly according to his choice so that it is expected to give birth to pin-bearers who have a sense of responsibility to the people who have chosen him.

Through direct elections are expected to give birth to aspirational and more accountable regional leaders. The legal dynamics of elections in Indonesia for more than a decade have given a significant political role. However, improvements to overcome the shortcomings of direct elections must still be made as necessary to set up a clean and transparent direct election recruitment process so that the objectives of direct elections to achieve people's sovereignty can be achieved, improving the quality of local elections including the integrity of the organizers of the Regional General Election Commission, making the construction of the same thinking and the same interpretation that money political crimes are criminal, so that any spouse of regional head candidates including supporters, each can receive and supervise in the same way against the type of political crimes of money, make thorough improvements to fundamental things in the political system, democracy and sovereignty in the implementation of elections in the region to comprehensive regulatory arrangements, so that there is no gap in misinterpretation and multi-interpretation of the law of the political package.

### Conclusion

The design of the change of the regional head election system directly simultaneously in the application of honest and fair principles in campaign activities, namely containing a standard description of the election of regional heads as channelling the aspirations and votes of the people who are democratic, objective, professional, proportional, transparent, accountable, fair, orderly, safe and useful, as the embodiment of the constitution and the 1945 Constitution as mandated in Article 18 Paragraph (A).

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