

# STRENGTHENING-LOCAL----- INDONESIA

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## Strengthening Local Democracy Through Election Regional Head Directly In Indonesia

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Article Info	Abstract
<p><b>Article History</b></p> <p>Received: May 06, 2021</p> <p>Accepted: August 15, 2021</p> <p><b>Keywords :</b> Local Democracy, General Election, Regional Head, Indonesia</p> <p><b>DOI:</b> 10.5281/zenodo.5203240</p>	<p><i>Direct elections for regional heads by the people began after the issuance of Law no. 32 of 2004 concerning Regional Government. After the implementation of direct regional head elections by the people for 12 years, there were pros and cons regarding the implementation of direct regional head elections so that Law No. 22 of 2014 concerning the Regional Head Election in a representative manner by the DPRD which was later canceled through Government Regulation in Lieu of Law (Perpu) No. 1 of 2014 concerning Direct Regional Head Election by the People. The issuance of a Government Regulation in Lieu of a Law is intended so that democracy at the regional or local level can develop where regional people can directly elect their leaders at the regional or local level. This research is a normative legal research where the focus of the study is the norms contained in Perpu No. 1 of 2014 which returns the regional head elections directly elected by the local people. This research approach uses a qualitative juridical approach, namely examining from the legal side in addition to providing explanations regarding the considerations issued by the president's Perpu and the public's response to direct regional head elections. The purpose of this study is to determine the process of regional head elections that are directly elected by the local people so that the development of democracy at the local level can run well. The results obtained from this research are that direct regional head elections by the local people reflect more of a democratic nature than through representation and are in accordance with the wishes of the constitution that sovereignty is in the hands of the people.</i></p>

### Introduction

The history of the Indonesian state administration experienced rapid development after the 1998 reform, which was shackled for a long time by the New Order regime where freedom to express opinions was limited, more so discussing and questioning the 1945 Constitution which at that time was considered sacred.

In 2002 there was a new chapter in the constitutional history of the Republic of Indonesia, namely in the fourth amendment to the 1945 Constitution and ratified on 10 August 2002, which previously underwent several stages of the process of the 1945 Constitution, the results of the first amendment were carried out on 19 October 1999, the results The second amendment was carried out on 18 August 2000, the third amendment was carried out on 9 November 2001 and the last was the fourth amendment on 10 August 2002.

During the New Order era, the implementation of general elections was fully the responsibility of the government, in this case the Ministry of Home Affairs chaired by the Minister of Home Affairs where the Election was a routine agenda of the Government with only two political parties and the GolonganKarya participating in the election. Most of the executing officers of the General Election are Government officials, where the government apparatus itself is an extension of the GolonganKarya, because at that time the Civil Servant's voice aspirations were channeled through the Indonesian Civil Servant Corps (KORPRI) to the GolonganKarya.

The implementation of direct, general, free, secret, honest, and fair Elections is only symbolic, the actual fact is that there are many violations and frauds, one of the factors is because the election executing officer is the Government who is also the winner. election.

After the reformation, there was a fundamental change in the state administration system and the Indonesian political system, elections are no longer the government that carries out but by a separate independent institution with the hope that the results of the election implementation process will produce legitimate government, namely the government produced by elections that are honest and indeed desired by people. For the purposes and implementation of the General Election, an institution called the General Election Commission (KPU) for the central level and the Provincial General Election Commission (KPUD Provinsi) for level I regions and the Regency / City Regional General Election Commission (KPUD Regency / City) for the regions was formed. level II District and Municipality.

During the reformation period after the collapse of the New Order era, Indonesia became a democratic country, one of which was the holding of honest, fair, free and secret elections in accordance with the will and conscience of the people guaranteed by the constitution, namely by the existence of an independent institution that was tasked with carrying out free, general, secret and fair elections with a view to electing the leaders desired by the people by directly involving the people to elect their leaders, including the blood head election.

For regional head elections, Law no.32 of 2004 concerning Regional Government, in which regional head elections are directly elected by the people who were previously elected by the Regional People's Representative Council based on the provisions of Law No.22 of 1999 concerning Regional Government. After running for 12 years, direct regional head elections have received much attention and seem to need to be rethought. This does not mean stepping back, but to see whether the implementation of direct regional head elections is indeed consistent and beneficial for the implementation of regional autonomy and can bring the welfare of the regional community. There are at least four disappointing phenomena related to the implementation of direct elections for regional heads by the people.

*First*, direct regional head elections are always accompanied by community conflicts, starting from the candidacy stage to even continuing until post-election. Conflict is part of democracy, but prolonged conflict that leads to violence and the termination of government is of course very detrimental and injures the meaning of democracy itself. This happened because the candidate they brought was defeated, so they committed acts of anarchism by attacking supporters of the winning candidate or other candidates who according to them committed irregularities. The emergence of polemics in society will actually have a bigger impact, because each party favoring and maintaining their respective partners in order to win the election in various ways. The mass rioting case in Mojokerto, the mass riot case in Tanah Papua serve as a reminder that riots due to direct elections still often occur.

*Second*, money politics has always been "smelled" in every regional election and has been seen as a spice, money politics, which is a bribery process, has shifted to be normal for both candidates and the community, resulting in mental damage to the community without them knowing it. As a result of this money politics, the people's votes have been interrupted. Candidates who are elected are not necessarily candidates who are truly ideal and desired by the people. Because they feel they have "bought" the votes of the people, there is no longer a relationship between the elected regional head and the voters. Money politics makes the implementation of regional elections very expensive for candidate pairs. Whereas from the point of view of the implementation of regional elections, of course it requires higher costs than the election by the DPRD (Regional People's Representative Council), especially if it has to be done in 2 rounds and the possibility of re-voting based on the Constitutional Court decision. Another consequence of this money politics is that candidates for regional heads who happen to be regional heads will try their hardest to repay the money they spend in various ways, because the money that may be used for nominating regional heads is from party loans that carry them, as a result of taking action. corruption against the Regional Budget (APBD).

*Third*, even though direct regional head elections have been held, it turns out that this is not directly proportional to the increase in regional welfare and progress. Not many regions have experienced significant increases in welfare and progress. Some regions have experienced quite phenomenal progress under the leadership of their regional heads, but more are still in place.

*Fourth*, the facts show that in the era of regional autonomy, there have been more cases of corruption. Regional heads who are directly elected do not have an impact on efforts to eradicate corruption. In fact, many regional heads are involved in corruption. (Nurhasim, 2010)

Based on the reasons mentioned above, there is an effort to replace the regional head election system directly with a stronger representative system so that Law no. 22 of 2014 concerning the election of regional heads in a representative manner, because direct election of the head of blood creates many problems. After the issuance of the law, there was a reaction from the public, NGOs, politicians and also the Mass Media who rejected the representative elections for regional heads and was then responded by President Susilo Bambang Yudhoyono who issued PERPU No. 1 of 2014 in which regional head elections were held through direct popular elections. With the consideration that direct regional head elections reflect more a democratic government in which the people have the right to elect regional leaders as a form of sovereignty in the hands of the people.

On the basis of some of the things the author has stated above, the author is interested in conducting research on Strengthening Local Democracy through Direct Regional Head Elections in Indonesia.

## Method <sup>2</sup>

The research method in writing scientific papers is to use normative legal research methods which are based on juridical analysis studies contained in Law no. 22 of 2014 concerning Representative Regional Head Elections through the Regional People's Representative Council (DPRD) which was later canceled through Government Regulation in Lieu of Law (Perpu) No. 1 of 2014 in which regional head elections are held directly by the people.

In normative legal research according to SoerjonoSoekanto, it consists of research on legal principles, legal systematics, legal synchronization and legal comparisons. Meanwhile, sociological or empirical legal research is a study of legal identification and legal effectiveness in social dynamics. For this reason, the law is often connected with the current and future social dynamics. (Soekanto, 2018)

This research also examines the sociological analysis which describes the condition of Indonesian society towards regional head elections in Indonesia. There are some people who want regional head elections in a representative manner on the grounds that direct elections for regional heads by the people require high costs and also cause clashes in the community between supporters of regional head candidates. On the other hand, there are those who want direct regional head elections on the grounds that direct regional head elections reflect a sense of democracy in addition to respecting the rights of the people as the highest holders of sovereignty in a democratic country.

## RESULTS AND DISCUSSION

### Purpose of Held Regional Head Election

Elections have a major influence on the political system of a country, through elections the public has the opportunity to participate by bringing up leaders and screening of these candidates. In essence, elections, in any country have the same essence. Election means that the people carry out activities to elect a person or group of people to become the leader of the people or the leader of the state. The elected leader will carry out the will of the people who elect him.

According to Parulian Donald, there are two direct benefits to be achieved by implementing the political electoral institution, namely the formation or cultivation of legitimate power (Authority) and achieving the level of political representation. (Parulian, 2010)

From the point of view of the objective both of these benefits are immediate goals that are on a relatively short time scale. This suggests that the benefits will be felt immediately after the electoral process takes place. The indirect objectives resulted from the overall activities of all parties involved in the electoral process, both contestants and implementers and supervisors in a relatively long period of time, namely political culture and political empowerment. In a simpler sense, the objective directly relates to the election result, while the indirect objective relates to the process of achieving the election result.

ArbiSanit concluded that elections basically have four main functions, namely 1) establishing the legitimacy of the ruler and the government; 2) the formation of people's political representatives; 3) circulation of the ruling elite; and 4) political education. (Arbi Sanit, 1997)

As a means of implementing the principle of people's sovereignty based on Pancasila in the Republic of Indonesia, elections have the aim of, among others;

1. Allows for a safe and peaceful transfer of government
2. To exercise people's sovereignty
3. In order to exercise citizens' human rights. (Harmailly Ibrahim, 1985)

The definition of government in totalitarian countries is different from democratic countries, in totalitarian countries it is determined by a group of people, while in democratic countries it is determined by the people through elections. Therefore, elections aim to allow for a change of government, but it does not mean that every election there must be a change of government, because there may be a political party in the parliamentary system, a government for two, three, or four times or a president in the United States or Indonesia. . for two terms of office.

It must be admitted that the objectives of elections differ significantly according to the existing political system and so do their functions. For a liberal political system, elections have four main objectives. First, forming the basis for the concept of liberal democracy. But elections, without open competition between social forces and political groups, there is no democracy. Second, to legitimize the political system. Third, validate. Fourth, elections as an essential element of political participation in western democracies.

In accordance with what is stated in the preamble and article 1 of the 1945 Constitution, Indonesia adheres to the principle of sovereignty of the people, what is meant here is the sovereignty possessed by the people, among others, reflected in the implementation of elections at a certain time. Because Election is in the framework of giving citizens the opportunity to exercise their rights, with the aim of;

1. To elect representatives who will exercise the sovereignty they have;
2. It is possible for him to sit in the People's Representative Body as the representative entrusted by his constituents.

Thus, basically elections are very important for citizens, political parties and the government. For a government that results from an honest election, it means that the government has the true support of the people, but on the other hand, if the election is not carried out honestly, the people's support is only artificial. From the point of view of the election itself, the three objectives of the election can only be achieved if the election is carried out honestly, so that every citizen who has the right to vote gives an option according to his conscience.

### Legal Studies on Regional Head Elections

Substantial differences between Law no. 32 of 2004 with the previous regional government law is the position of the regional head whose election process is carried out in a democratic manner. On a constitutional basis, the election is a highlight of the results of the second amendment to the 1945 Constitution in Article 18 paragraph (4) which states: "The governor, regent and mayor as heads of provinces, regencies and cities respectively are elected democratically."

The law considers that democratic regional head and deputy regional head elections can be carried out in two ways. First, election by the DPRD. Both elections are direct by the people. Article 62 of Law Number 22 of 2003 concerning the Composition and Position of the People's Consultative Assembly (MPR), the People's Representative Council (DPR), the Regional Representative Council (DPD) and the Regional People's Representative Council (DPRD) does not state the duties and powers of the DPRD to elect the head, regions and deputy regional heads. By not incorporating the provisions concerning regional head and deputy regional head elections, it can be concluded that the meaning of democratic regional head elections as referred to in the 1945 Constitution is direct elections by the people (Titik Triwulan Titik, 2006)

In connection with the existence of Article 18 paragraph (4) of the 1945 Constitution Philipus Hadjon, quoted by Titik Triwulan Titik, said that:

The principle of democracy contained in article 18 paragraph (3 and 4) concerns the direct election of DPRD members and Regional Heads, thus in the state administration system of the Republic of Indonesia, general elections are not only to elect people's representatives (DPR, DPD, DPRD) but also for the head government. (Titik Triwulan Titik, 2015)

The legal considerations of the Constitutional Court said:

The formula for being chosen "democratically elected" in the provisions of the Pilkada also considers the implementation of regional head elections in special and special regions as meant in Article 18B Paragraph (1) of the 1945 Constitution. However, this does not mean that direct Pilkada is the only one. The way to interpret the phrase "democratically elected" as contained in Article 18 Paragraph (4) of the 1945 Constitution. However, the reality is that in describing the meaning of "democratically elected" in Article 18 Paragraph (4) of the 1945 Constitution, legislators have chosen the direct election method. As a consequence, the principles and election management institutions must be reflected in the implementation of the elections. (Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia)

According to Taufiqurrahman Syahuri: The formula for "democratically elected" in the election provisions also considers the implementation of regional elections in special and special characteristics as referred to in Article 18B Paragraph (1) of the 1945 Constitution. This does not mean that direct Pilkada is the only one. A way to interpret the phrase "democratically elected" as contained in Article 18 Paragraph (4) of the 1945 Constitution. (Syahuri, 2011)

The direct election of regional heads and deputy regional heads is basically a national political process towards a life that is more democratic, transparent and responsible. In addition, the direct election of regional heads and deputy regional heads indicates a change in local democracy, which is not just a vertical distribution of power between levels of government.

Signal of regional head elections from a constitutional and governmental perspective will produce a condition. First, regional head elections will produce regional governments that have direct legitimacy from the community, where local governments have public responsibility and accountability that will not arbitrarily deviate; Second, the climate fosters regional conditions to meet its momentum. In the sense that the fully supported role of the regional head will be able to bring a constructive catalyst for the progress of society; Third, regional head elections will essentially support local democratization, namely that the future of community life in the regions is brightened due to the opening of public space through proactive community participation. (Titik Triwulan Titik, 2006)

Direct regional head elections as a democratic instrument to capture regional level national leadership, although not carried out simultaneously such as legislative elections or presidential and vice presidential elections, regulations or regulations are needed so that they can guarantee the implementation of direct, general, free, secret, honest and fair general elections.

### The Problems of Direct Regional Head Elections

The underlying policies for direct regional head elections in Indonesia include the following:

*First*, the president as the state administrator or the highest government in Indonesia, the election process is through direct elections by the people where the election by the people is the first time in Indonesia that was carried out through the 2004 elections, while the lowest head of government, namely the village head, has been carried out by the village people. Direct election so it is natural that the election for governors, mayors and regents is carried out directly by the people, considering that the lowest government is directly elected by the people. *Second*, direct general elections for regional head elections reflect more on the people's sovereignty, because the people in the regions are directly involved in electing their leaders as evidence that sovereignty is in

the hands of the people as regulated in the provisions of article 1 paragraph (2) of the 1945 NRI Constitution, that sovereignty is in the hands of the people and implemented according to the constitution. *Third*, in terms of the legal review of Law Number 22 Year which calls for a representative regional head election through the DPRD, it turns out that it is no longer relevant because Law Number 22 of 2003 concerning the Composition and Position of the MPR, DPR, DPRD, and DPD requires an election, head of the region directly by the people. (Catur Wido Haruni, 2009)

The background and objectives of the regional head elections are directly elected by the people as stated in Law Number 32 of 2004 concerning Regional Government, which can be seen in the preamble or consideration of the formation of the law, namely in the section considering letter (a) which contains the following conditions;

"That in the framework of implementing regional governance in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, regional governments, which regulate and manage government affairs themselves according to the principles of autonomy and co-administration, are directed to accelerate the realization of community welfare through improvement, services, empowerment, and community participation, as well as enhancing regional competitiveness by taking into account the principles of democracy, equity, justice, the specialties and specialties of a region in the system of the Unitary State of the Republic of Indonesia". In the course of time after being in effect for approximately 12 years, direct regional head elections have been questioned by many groups, although from a democratic side, direct regional elections reflect the aspirations of the people more than representative democracy. However, the direct elections also caused problems including the following:

1. In its implementation, direct election for regional heads requires a lot of money because during the campaign period, they must go directly to the community to meet their voters, both personally and through electronic media. This has the effect of only potential partners who have a lot of money or are supported by sponsors who can advance in the race for the seat of regional head leadership.
2. In direct regional head elections prioritizing public figures or aspects of the appearance of a regional head candidate but does not emphasize or pay attention to aspects of the ability of a regional head candidate to lead an organization in leading a region.
3. In direct regional head elections it is possible to have horizontal social conflicts between supporters of regional head candidates due to political immaturity. They are not used to accepting defeat in a sporting manner and congratulating the winners, which mostly happens through legal proceedings. During the New Order era, regional head elections were fraught with engineering and until now they still do not believe in the existing system, both direct regional head elections, especially in a representative manner.
4. It is feared that in direct regional head elections, minority groups that are different in terms of religion, race, ethnicity and between groups will be left out in the political arena if the majority factors are raised ..
5. Direct regional head elections according to religious leaders many downside or disadvantages compared to benefits, the Indonesian Ulama Council recommends use the representative system by the DPRD as before so that conditions the people are more peaceful.
6. The use of the system for direct regional head elections is numerous lead to conflicts between community groups that ended on anarchic acts and disturbing order and security at area.
7. Direct regional head elections by the original people it was hoped that it would not produce good regional leaders proven, many incidents that befell regional heads because of involved in corruption due to the very cost of becoming a regional head expensive.
8. Most areas in Indonesia will be threatened bankruptcy as a result of financing regional head elections requires high costs. (Leo Agustino, 2011)

With these problems, in 2014 changes were made to the regional head elections in Indonesia. In the process of this change, there was a tug of war among the House of Representatives of the Republic of Indonesia between those who were pro towards changes in direct regional head elections and those who were contra where the contra still maintained direct regional head elections. The end of the debate was a voting vote which was won by an opinion that was pro to direct changes to regional heads and successfully issued Law Number 22 of 2014 concerning Representative Regional Head Elections and strengthened again by Law Number 23 of 2014 concerning Regional Government. These two laws serve as the basis for the enforcement of regional head elections in Indonesia, where regional heads are elected in a representative manner by the Regional People's Representative Council. Not long after the two laws were enacted, there were protests from the public, community leaders, academics, and non-governmental organizations protesting against the implementation of regional head elections by the DPRD because the DPRD currently does not gain the trust of the public because it is involved in many corruption problems, collusion and nepotism (KKN). As a result of the many protests, the President of the Republic of Indonesia issued a Government Regulation in Lieu of Law (Perpu) No. 1 of 2014 concerning Direct Regional Head Elections by the People which invalidates both laws so that in Indonesia it still uses direct regional head elections by the people and the two laws have not been enforced in regional head elections.

### Direct Regional Head Elections Are Realization of Local Level Democratization

Democracy is a way of regulating the administration of the state, where the people are involved in choosing a candidate for leader who is given the mandate in regulating the administration of government or governance of the people by the people and for the people. In the world, we know democracy directly and democracy in a representative manner, both directly and in a representative manner, is a form of the state administration system where the people are involved in the administration of the country both in the presidential election, regional head election, the People's Representative Council, and the Regional Representative Council.

The implementation of democracy in Indonesia during the New Order era was related to the formation of a political system that reflected the principles of representation, participation and control. The principle of participation guarantees aspects of people's participation in the regional development planning process; or people's participation in the process of selecting representatives in political institutions; while the principle of control emphasizes aspects of government accountability. In democracy, the institutional aspect is the virtue of ongoing democratic political practice, so that there are political parties, general elections and a free press. Meanwhile, the definition of local has the meaning of the local area where direct democracy is practiced.

Local democracy in regional head elections is a momentum that still raises big questions in its implementation. This question is related to participatory democracy that will be carried out. Why not, granting regional people's sovereignty to their elites is still tinged with uncertainty, both in terms of the work procedures of the organizers and participants and the position of voters.

In terms of the sovereignty of the regional people, local democracy is built to provide the portion that should be obtained by the local people in giving legitimacy to the executive and legislative elites. So far, the local people have only given sovereignty to the regional legislature and executive through legislative and executive elections. The sovereignty of the people within the framework of the government system can be divided into the hierarchies of national and local democracy from the procedures for political recruitment.

The mistrust of the people and the reform era led to direct regional elections. This does not directly imply whether or not democracy is good, because in other countries there are also variations in the implementation of democracy, either direct, representative or even by appointment. The degree of importance is the election of an accountable political officer in accordance with the needs for achievement of the people.

Democracy is not an autonomous symptom independent of other symptoms. It can even be said that the emergence of the sinking or ebb and flow of democracy at certain times is influenced by various external symptoms in the form of ideology, politics, economy, social, culture and so on. These various factors will influence the various rationale for democracy, democratic mechanisms and others which in turn will give birth to various forms of democracy with various predicates placed on them. (Astawa, 2013)

BagirManan, stated that the presence of democracy is not only measured by the existence of democratic institutions, such as the existence of a representative body, general elections are not a guarantee of the presence of democracy. Democracy is not just an institution or institution. Democracy is also a mechanism, even if it is not exaggerated to say, a democratic mechanism is a determinant for measuring the presence of real democracy, both in the life of the state or government and in the life of society in general. Culturally, democracy will be fertile if it is supported by democratic behavior such as readiness to dissent, readiness to lose, readiness to compete honestly, peaceful attitude and so on. (Bagir Manan, 2001)

Direct regional head elections are a form of democracy at the local level because local residents are given the opportunity to channel their aspirations to elect candidates for leaders at the regional or local level. This shows that there is a will from the government after the reforms to build Indonesian democracy in an honest, free, confidential, public manner that directly involves the people in electing their leaders. At the regional level is the election of regional heads, both regional heads at the provincial level and regional heads at the regency / city level throughout Indonesia. The emphasis on the people at the regional level to elect the leader that the people of the region want is a manifestation of local democratization that exists in Indonesia as a result of democratic development in Indonesia.

The essence of democracy is public participation in determining political officials and in making public policies. The quality of a democratic system is also determined by the quality of the selection process for representatives, including representatives who have the mandate to lead the government. Therefore, direct regional head elections are one of the alternatives commonly chosen to increase the legitimacy of local governments. There are a number of arguments that underlie the relevance of direct regional head elections with the legitimacy of local government.

*First*, direct elections are needed to break the party oligarchy that characterizes the pattern of organizing political parties in the DPRD.

*Second*, direct regional head elections can improve the quality of accountability of local political elites, including regional heads. The mechanism for regional head elections in a representative manner tends to create excessive dependence on regional heads on DPRD.

*Third*, direct elections for regional heads will strengthen and increase the selection of local elite leadership so as to open up opportunities for the emergence of alternative figures who have real capability and support in the local community.

*Fourth*, direct elections further improve the quality of representation (representativeness) because people can determine their leaders at the local level.

### Conclusion

There are many factors that cause direct regional head elections to cause problems in the field at this time so that there are efforts to reformat the experience of direct regional head elections, even though scientifically studied direct head elections more reflect a sense of democracy and restore people's sovereignty so that The people have a role in determining or choosing their leaders. But on the other hand, direct regional head elections have a lot of negative effects, for example money politics, expensive implementation costs, social friction often occurs in the community between supporters of regional head candidates.

Solving the problem of direct regional head elections, according to the author, there is no need to change the election system, we use a direct regional election system which is a mechanism process that we need to fix so that the negative effects of direct regional head elections can be reduced. In general, direct regional head elections are a manifestation of the sovereignty of the people at the regional level and as an elaboration on strengthening democracy at the local level.

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