

The Dynamics of the Regulation of the Local Head Election System towards a Democratic and Aspiratory Local Head Election System

Sulardi^{1*} Tri Sulistyarningsih^{2*}

1.Law Faculty, University of Muhammadiyah Malang, Jl Raya Tlogomas 246 Malang

2.Faculty of Social and Political Science, University of Muhammadiyah Malang,, Jl Raya Tlogomas 246 Malang

*E-mail of the corresponding author: sulardi.mgl@gmail.com , sulis226@gmail.com

Abstract

This present research is expected to produce a formulation of regulations on a democratic and aspiratory local head election in order to realize good democracy and governance from centralization to decentralization, from authoritarian to democracy. The approach employed is a constructivism paradigm, therefore the characteristics of this research are as follows: 1 an assumption that this research approach employed comes into reality is that the law regulating the local head election is the reality of mental construction and subjective and various actions resulted by the individual writers; 2 to obtain the data, the researchers made some interactions with experts accurately, validly and legally in terms of a competent government of which it is the focus of the present research; 3 the interactions with the experts (used for interviews) were done directly, and 4 the researchers made use of various scientific works as references to construct their own regulation on a local head election and 5 to obtain inputs for the betterment of the research results, some focus group discussions were held.

Keywords: Regulation, Local Head Election

I. INTRODUCTION

This research aims at obtaining data on the regulations on a local head election in Indonesia from the New Order to the reformation eras. The theme of this research deals with that of the previous research made by the researchers. This present research especially will describe some regulations for the local head election realized in some laws on local government where in each era of the government the laws were also changed. The laws regulating the local head election in Indonesia are always based on a centralistic pattern. If an evolution of the laws on the local head election once existed, this process is very slow. This may be traced from Dutch colonialism to the post reformation eras.

In various legislations from the post proclamation era to the early new order era, the local heads were determined in two ways: it was appointed by the official in the upper level or proposed by the local Parliament to be chosen by the President or the Minister of Internal Affairs to be the local head. This centralistic pattern showed the ruler's characteristic which is not different from the era between the Dutch colonialism and the Indonesian government. The character of the law on the local head election in the 1965 Law no 18 shows its authoritarian style, since the local head is determined by the state official above the position. This did not give any room and chance for the local people to participate in making their own choice of the local head. The law on the local head changed in 1974 after the 1974 law no.v5 on the Principles of Local Government was regulated. In the law, the legal institutionalization of the local head election was made through the election mechanism in the Local Parliament. The problem is that although the election mechanism is through the Local Parliament, but the intervention from the central government is still very great, even it is the central government which determines the candidate of a local head. It is shown in the 1974 Law no. 5, Article 14, verse (1) that the Local Head of Level I (the Governor) is nominated by the Local Parliament from at least 3 and at most 5 nominees after being deliberated and agreed between the heads of the Local Parliament/Fractions and the Minister of Internal Affairs. Verse (2): "The result of the election as stated in verse (1) of this article is proposed by the concerned Local Parliament to the President via the Minister of Internal Affairs for at least two nominees one of whom would be appointed".

The stipulation of the governor election is the same for the local head of the Level I or the mayor/regent. Therefore, when the 1974 Law no. 5 was prevailing, the legal institutionalization of the local head election was made for the interest of the central government. This enabled to have candidates that had been prepared on purpose by the central government. The Local Parliament as the authorized institution to hold the local head election merely served as the "committee" to organize the local head election. The one who became a local head was determined by the central government. This caused a fierce debate at that time in the head quarters of ABRI (now TNI) (Indonesian Armed Forces)), DPP (leadership of political party at national level) Golkar (which possessed majority power in legislative institution either at local or central level) and the Department of Internal Affairs.

Due to the collapse of the New Order regime, and a strong intention to have a decentralized government among the people, the 1999 Law no. 22 on the Local Government was regulated. In the Law, the legal institutionalization of local head election changed, where the election of local heads which are then called Governors, regents and Mayors were under the authority of the Local Parliament. The central government merely inaugurated and approved the results of the elections fully made by the Local Parliament.

On the basis of the 1999 Law no. 22 a meaningful progress happened in the local head election, from centralization into decentralization by the Local Parliament. But this shift from the centralistic into the decentralistic ways had not given any guarantee that the implementation of local head election would run well. Even based on this Law, in the implementation, many deviations happened. They are among others as follows.

Some distortions happened between the candidates the people and the members of the Local Parliament intended to choose. This occurred since a strong domination from the heads of political parties (DPPs) giving an approval for the candidate that was to be proposed in the arena of the local head election. So that it is clear that the DPPs of political parties participated in determining who would be nominated and elected in the local head election. The members of Local Parliament usually tended to hear the voices from the political elites of their parties, instead of the people they represented.

Money politics among members of Local Parliament occurred from the enrollment to the election processes of local head election, it was the fractions in the Local Parliament that really determined who would be accepted as the candidates. As stated above, it is mentioned that in the reformation era, there are two legal bases of the local head election, namely the 1999 Law no. 22 and the 2004 Law no. 32 both of which are on the Local Government. The legal change in the local head election took place in the ways of electing local heads, from the candidates being nominated by fractions in Local Parliament and elected by members of Local Parliament to being nominated by political parties with 15% chairs in the Local Parliament and directly elected by the people. The government's domination is less in quantity, but a centralistic spirit may still be felt. It can be seen from how the political parties chose the candidates of governors, regents or mayors where approvals from the DPPs of political parties with the offices in Jakarta still happen.

Political parties have not fully made use of autonomous ways in determining their local heads. Dealing with the results of the local head election based on the two laws, there are still many distortions between the intention of the people and the central heads of political parties. Moreover, this condition is deteriorated by money politics that still commonly happens. This study will try to answer a question: What is the dynamics of the regulation of the local head election from the New Order to the Reformation Eras?

II. RESEARCH METHOD

It is a non doctrinal legal research using a socio-legal approach. The object of the study is that the law is conceptualized as a meaningful symbol as the results of human mental construction (law makers) as realized in the articles of the laws regulating the Local Head Election System.

This research may be specified as a descriptive analytical research to depict comprehensively the object of the study namely the existence of the local head election system as a norm stated in the laws, thoughts from the experts in constitution, or doctrines of democracy and general election. The description of the findings would be oriented to answer the above-mentioned research question. Therefore, this research is not merely descriptive but also prescriptive in nature since it is intended to give inputs to the regulations.

III. RESEARCH RESULTS AND ANALYSIS

A. Local Head Election from the Dutch Colonialism to New Order Eras

During the Dutch colonialism, the regions named as *Gewest*, *Afdeling*, *Onderafdeling*, *Regentschap*, *Distrik* and *Onderdistrik* were each headed by a Dutch civil service such as *Gouverneur* or *Resident*, *Assisten Resident*, meanwhile *Regent*, *Wedana*, heads of *Distrik*, or of *Onderdistrik* were under the hands of Indonesian civil services. All were appointed by the Dutch kingdom for their own interest.

It is understandable that the Dutch government in 1854 decided that the *Regerings Reglement*, (RR 1854) was as a kind of Constitution for Indonesia during the Dutch colonialism at that time. It was on the basis of the RR 1854 that the holding of power by the Dutch kingdom was made. At that time any government affairs were implemented and arranged by officials of the Dutch government which were responsible for the Governor General acted as the Representatives of the Crown of the Dutch Kingdom. A centralistic type was certainly employed for the interest of the central government, the Dutch Kingdom.

After the proclamation of 1945 Indonesian independence, such a centralistic pattern of the local head election was still maintained. Various regulations during the post proclamation to early New Order on the new local head election were of two types: he was assigned by the official above it or proposed by the Local Parliament to the President or the Minister of Internal Affairs to be the local head. This centralistic pattern showed that the characteristics of the rulers during the Dutch colonialism were not different from those of the rulers in Indonesian government during the post independence era.

The change in regime from the Guided Democracy Order to the New Order also did not show any shift from such a centralistic pattern. In the 1974 Law no.5 on the Principles of Local Government, a centralistic drama was performed in the process of the local head election either at the provincial, regent, or municipals levels. A military domination with Golongan Karya really determined who would be suitable for a head position in an area. The local head must be either from the military official or a head of Golongan Karya.

The legal characteristic of the 1965 Law no. 18 is that it is authoritarian, because the local head was determined by the official above him. This didn't give any room and chance for the local people to participate in electing their own local head. The law on the local head election changed in 1974 after the 1974 Law no. 5 on Principles of Local Government was regulated. In the law it is shown that the legal institutionalization of the local head election was made by the Local Parliament, but the intervention from the central government was still great, even the central government really determined who would become the candidate. It is shown in the 1974 Law no.5, Article 12 verse (1) that the Local Head of Level I (the Governor) is nominated by the Local Parliament from at least 3 and at most 5 nominees after being deliberated and agreed between the heads of the Local Parliament/Fractions and the Minister of Internal Affairs. Verse (2): "The result of the election as stated in verse (1) of this article is proposed by the concerned Local Parliament to the President via the Minister of Internal Affairs for at least two nominees one of whom would be appointed".

B. The Local Head Election Based on the 1999 Law No. 22

Due to the collapse of the New Order regime, and a strong intention to have a decentralized government among the people, the 1999 Law no. 22 on the Local Government was regulated. In the Law, the legal institutionalization of local head election changed, where the election of local heads which are then called Governors, regents and Mayors were under the authority of the Local Parliament. The central government merely inaugurated and approved the results of the elections fully made by the Local Parliament.

On the basis of the 1999 Law No. 22, a significant advancement in the local head election occurred, from centralistic into decentralistic nature made by the Local Parliament. Based on the Law, there are some stages in the mechanism of the local head election.

1.The Preparation Stage

Six months before a local head's administration ended, the Local Parliament gave a notification to the local head intended to make him prepare a responsibility report in front of a plenary session of the Local Parliament. The report given at the end of the administration means that if the report is accepted, he could nominate himself for the next local head election, but if refused, he couldn't.

In the next process of the local head election, the Local Parliament prepared the election by establishing a special committee with the task to prepare a rule of the game in the election. If the rule of the game was accepted by the head of the Local Parliament, then it was followed up by the head by establishing a Committee of the Local Head Election, consisting of the Head and the vice Head of the Local Parliament and the members of which their number is in accordance with the need.

2.The Enrollment and Screening Stage

The Committee made a socialization on the local head election to the public, containing: the schedule from the enrollment to the inauguration by the Minister of Internal Affairs under the name of the President. Then the enrollment of the candidates through the Committee is open.

After the enrollment ended, the Committee submits the list of the candidates who had fulfilled the requirements after the scrutiny by the Local Parliament to be determined as the Candidates of the Local Head and Vice Local Head. The screening of the candidates was made by the fractions in order to choose the Candidates proposed by fractions in the Local Parliament. The fractions gave opportunities to the public, individually or social organizations to give opinions of the candidates.

Then the fractions in the Local Parliament process the selection of the candidates by scrutinizing the completeness and validity of the dossiers administratively. Then the candidates were tested by asking them to present their vision, missions and by making dialogues. Then the fraction determined a pair of candidates as stated in the fraction's decision. After the fraction had determined a pair of candidates of local head and the vice-localhead, the fraction or composites of fractions gave an explanation about their candidates of the local head.

The head of the Local Parliament asked pairs of candidates that had been determined by a fraction to present their vision, missions and work programs if they were elected as the local head. On the basis of the vision, missions, and the work programs presented by the pairs of the candidates, the head of the Local Parliament and the fractions made an valuation of the candidates. Then through deliberation or voting, at least two pairs of candidates of the local head and the vice local head were determined.

3.Determination, Election and Inauguration

After the head of the Local Parliament determined pairs of candidates of local head and vice local head, the candidates were consulted with the President or the Minister of Internal Affairs. The pairs of the nominated candidates were then directly elected by the members of the Local Parliament. Each member possessed one vote for a pair of candidate. A pair of candidates who got the most votes would be determined as the local head and

vice- local head and legitimized by the President.

C. The Implementation of the Local Head Election by the Local Parliament

Dealing with the election of Local Heads by the Local Parliament, in many regions it is presumed that some deviation happened, namely money politics, either during the process of election or at the election. It probably occurred, remembering that the determining factor in the candidacy is the fractions in the Local Parliament. This mechanism is a gate for the candidates to make a certain “agreement” with the fractions which at last it would lead to money politics and to a certain political interest.

During the election, there is a great chance that money politics happened from the candidates to the members of the Local Parliament. Besides money politics, there might some distortions between what it is intended by the people and what is done by the members of the Local Parliament, so that it might happen that an elected local head is actually not intended by the local people.

This may happened because the domination of the DPPs of Political Parties that could agree on who would be nominated as a local head was really determined by the DPPs. Such a local head election with full of interest of the DPPs or of political load occurred in various areas like in Lampung, Wes Java, Jakarta, Central Java and also in East Java.

The election model adopted of course would result in some injuries either for the people or cadres of parties because they should lose due to the desire of the heads of the DPPs of their political parties. Even because of such a disappointment, many anarchistic actions happened in various areas.

Moreover, the domination of the DPPs expressed by giving ‘approvals’ to certain candidates might cause some distrust from the people to political parties which were at first supported by the people. Therefore, the function of a political party as the carrier of its supporters’ aspiration could not be performed well. Whereas the mechanism of the local head election was based on the Law on the Local Autonomy where local people’s intention, instead of intention of heads of a political party in Jakarta, should be given more attention.

The the shift from centralisation to decentralization did not give an assurance that a local head election would run well. Precisely based in this Law, in the election some deviations had occurred in many areas. The deviations among others are as follows.

1. Some distortions happened between whom the people want and the members of the Local Parliament vote. It is due to the strong domination of the heads of political parties through their approvals to candidates that would be allowed to be proposed in the arena of a local head election. Thus, it is clear that the DPPs of Political Parties contributed to the determination of who will be nominated and elected. It is pity that the members of Local Parliament paid more attention to the voice of the political elite of their party, than that of the people they represent. This for example happened in Lampung, Jakarta, West Java, Central Java, and other areas (Sinar Harapan July 31, 2003). This model might hurt the feelings or justness of the cadres of political parties in local areas and of the people in local areas who were also injured by the heads of political parties at the central level, and this condition became worse due to the Local Parliament that did not hear the people’s aspirations.
2. Money politics occurred from the process of enrollment to the election by the members of the Local Parliament, remembering it was the fractions in the Local Parliament that determined who would be accepted or not as the candidates.

1. The Local Head Election Based on the 2004 Law No. 32

There had been so many violations to the stipulations in the 1999 Law No. 22 thatn the 2004 Law No. 32 on The Local Government was legalized in 2004. In this Law, some legal rules on the local head election change, from being elected by the members of the Local Parliament into being directly elected by the people.

Theoretically, the 2004 Law No. 32 is democratic than the 1999 Law No. 22, but in the implementation of this direct election, practices of money politics were still assumed to happen, in various areas refusals to the candidates and also to the inaugurations of the elected local heads also still arose.

As described above, in the implementation of the local had election during the reformation era, two legal bases exist namely the 1999 Law No 22 and the 2004 Law No 32 on the Local Government. The legal change of the local head election has taken place in the way of the local head election. At first candidates of the local head election were made based on the nomination by the fractions and elected by the members of the Local Parliament, then they are determined by political parties with 15% of the number of chairs of the Local Parliament and then directly elected by the people. The domination from the central government decreases, but the centralistic spirit is still felt. This still might be sensed from the ways political parties proposed candidates of governors, regents, or mayors where approvals from the DPPs of Political Parties with offices in Jakarta were still common.

Chances political parties have in using autonomous ways in determining local heads were not fully made use of. In the results of local head elections on the basis of the two laws, some distortions betwen who were intended by the people to be their local leaders and by the central heads of political parties ensued.

Moreover, money politics was not something secret anymore, either from candidates to political parties or to voters.

The legal changes in the local head election are accelerated by the Constitution Court through its Decision No. 005/PUU-VII/2007 which opens a room of an individual candidate to compete in the arrogation of a local leadership chair. But the evolution rate the Constitution Court has triggered has been strongly slowed down by the concerned institutions to follow up the decision. The Parliament and the Government seem to have the same language, namely there is a reluctance to soonly revise the 2004 Law No 32 on the Local Government. The President seems not to have a high desire to issue a government regulation to speed up an openness of independent candidates in a local head election. Whereas the prominent figures in local area are very enthusiastic in welcoming the chance for individual candidates in a local head election.

For that reason, a legal evolution of the local head election has really never taken place. The Parliament and the President jointly slow down the evolution. Centralization finely seems to be still strongly implemented in the process of the local head election today, or in the future. Such a legal evolution of the local head election is too frozen, it is really unshakeable for the interest of the ruling regime. In short, the legal character of local head election still stay in its place namely centralitic in nature, though from regime to regim the laws regulating the local head election change from one form to another.

2. Democratization in the Implementation of the Local Head Election

In the *Kembali ke Kedaulatan Rakyat, Pandangan terhadap Konstitusi (Returning to the People's Sovereignty, A View on the Constitution (1999))*, it is stated that participation is the core of democracy; **"Without participation, no democracy exists"**, and an important element in democratization dealing with the local head election is the local reinforcement – the local people and or local institution --

If this becomes the criterion of the democracy attainment, it actually can be stated that during the Guided Democracy Order the process of democratisation did not happen, even no democratization occurred in this time. Because as a whole the local head election was determined by the central institution. The local people as the basis of democracy were not involved in the process of the local head election.

The people should accept anything the central government had decided without any rights to refuse the decision. This showed that no reinforcement at the local existed. From the 1948 Law No.22 to the 1965 Law No. 18, the local head election was determined by the government above the level of the concerned government.

When the 1974 Law No.5 prevailed, the legal institutionalization of the local head election was intended for the interest of the central government, so that if often happened that a certain local head might be prepared at early time by the central government. The Local Parliament as the authorized institution of which the duty was to implement the local head election merely functioned as the implementing "committee" of the local head election. It is the central government that dominantly determined who would become the local head. Therefore, fierce debates at that time even took place at the headquarter of Armed Force (now TNI), DPP of Golkar (that at that time had a majority power in legislative institutions either in local or central levels) and the Department of Internal Affairs.

Theoretically, a legal institutionalization of the local head election at that time shows an authoritarian nuance. The people in local areas merel accept what is determined by the central government. Even in determining of who would be nominated as a local head, the Minister of Internal Affairs was not tied up to the result of the number of voting a candidate obtained in the Local Parliament. Therefore any candidate the central government intended to nominate surely would become a local head. During this time, any resistance to the authoritarian attitude of the government was not so strong as it is now. It caused an impression that the local head election on the basis of the 1974 Law No. 5 run better because no resistance happened either during the process, the election or the inauguration. Even the choice of the local head the government made was always right, for the local interest.

Due to the model of the election and also the responsibility of the local head to the officer above his level, as a result, local heads were more oriented to serve what is intended by the central government, instead of their people.

This showed a government shift from the Guided Democracy Order to the New Order. The model of the local head election did not give a meaningful color to the democracy advancement, it was on the way around, namely a democracy drama. The Local Parliament asif implement a democratic local head election, but it was actually the government that designed that the Local Parliament merely served not more than as the committee in the local head election.

When the New Order collapsed in 1998, a shift of the legal institutionalization of the local head election ocured. Even in the period of 6 years, two changes took place, namely the replacement of the 1999 Law No.22 by the 2004 Law No.32. The shift was made after the Local Parliament was given an authority to determine a local head election. On the basis of the 2004 Law No. 32, the local head is directly elected by the people. According to Mahfud MD (2007: 133-135) on the basis of experiences in Indonesia, there are at least

two reasons why a direct election is necessary. First, a direct election may give a better opportunity to have a candidate who is in line with the people's intention. Second, it is intended to keep a stability of a government so that the government will not be overthrown by the parliament before its administration ends.

Actually the shift of the legal institutionalization of a local head election has taken place in accordance with what is intended by the people to be involved in the process of the local head election. But, some dishonesty still arose either the one made by the members of the society, the candidates, or the implementers of the local head election. Even, Heru Nugroho in his article with the title of: "Berakhirnya Demokrasi di Era Reformasi" (The End of Democracy in the Reformation Era) (**Kompas December 5, 2005**) states that though a direct local head election has been put into practice in various areas, a problem dealing with the implementation of the democracy should be put forward, remembering that in many areas, there were still many persons who did not participate in the election of which the percentage reached 30% in average, even in some areas, 50%. People's participation, therefore, should be quantitatively improved.

Dealing with the implementation of the local head election in (**Suara Merdeka**, July 29, 2005) it is stated that:

A direct local head election expected to become one of the boosting elements of the people's political empowerment even resulted in anarchistic actions in some areas. Its technical-procedural mechanism may be seen, but in some areas some dissatisfaction arose, as expressed through anarchistic actions, either during or after the processes of the local head election. Such a dark portrait for example may be seen in the brutality occurred in Kaur regency, Bengkulu, early this week. About two thousand people with various sharp weapons attended to the offices of the KPUD (The Implementing Commission for Local Election), the Local Parliament, and also the local government and defaced and set fire to state facilities.

In some areas violences always shadowed the people's lives. It is a common story that there are offices of KPUDs which were attacked, bit into, or sealed by a mass of supporters of dissatisfied candidates of regents/mayors. The determination of the elected candidates are impeded by demonstration, followed by equal actions. Such actions not only express democracy rights, but in the local head election may also be seen as a part of a tendency to distrust one another among various elements involved in it. Is it caused by immature or half-mature or by a cost from a learning that needs hard works to make it lead into a track of a political maturity?

Anything happening in the implementation of local head election is caused by the people's disappointment, since it should be the people who determine who will become their local head, but it turns out that the political parties do not listen to their aspiration. Even elites of political parties in local area give more attention to the voices of the heads of political parties at central level. Therefore a centralistic nuance is still be strongly felt.

Therefore, the problem to attend to is not only the legal institution that should fulfill values of democracy, but also a culture to democratize in the society. It is because legal instruments have been formed by paying attention to the values of democracy, namely the existence of participation, equality and of justice, although it turns out that it is still necessary for the people to learn to democratize, namely they or their candidates should be ready to lose, ready to be refused by the KPU (General Election Commission) if their candidates cannot fulfill the requirements. If this happens the democratization in the local head election may be implemented well.

It is a pity that some Indonesian people are still at the theoretical level in their democracy, when practiced, they have not been ready yet, especially, to lose. Moreover, it should be understood that the legal institutionalization of local head election through laws has not fully shown a specific character of an autonomous law. This is caused by the fact that the formation of the Laws on the Local Government was not free from political interests, whereas according to Philippe Nonet and Philip Selznick, a specific character of an autonomous law is that "The law is separated from Politics" (2003).

3. An Alternative System of Local Head Election

The head news in Jawa Pos Minggu (September 15, 2013) with the title of "Kepala Daerah Bermasalah Naik" (The Number of Local Heads in Problems Increase) is important to notice because the news contains an idea from the Ministry of Internal Affairs to propose that the election of regents and mayors be returned to the Local Parliament. This idea is based on some problems among others: the cost for implementing local head election is high, the local head election triggers horizontal conflicts, and many local heads are snared with legal problems.

Problems arising caused by the implementation of the local head election as presented above factually happened. But are they straightly made to be strong reasons to return the election of regents and mayors to the Local Parliament?

It is necessary to remind this nation that due to the collapse of the New Order regime in 1998, some changes in the government orientation from an authoritarian centrality to decentralistic democracy have happened. It is signed by the issue of the 1999 Law No 22 on the Local Government. In this Law, the legal institutionalization of the local head election changed, where on the basis of the 1999 Law, the local head

election, then called Governors, Regents, and Mayors is fully under the authority of the Local Parliament. The central government merely inaugurates and legalizes the results of the local head election.

On the basis of the 1999 Law No. 22, actually there has been some meaningful advancement in terms of the local head election from centralistic to decentralistic in nature by the Local Parliament. But, the shift from this centralisation to decentralisation would not give any guaranty that the implementation of the local head election would run well. Even on the basis of this Law, serious problems arose among others: distortion between who intended to choose by the people and by the members of the Local Parliament. This happened because there was a strong domination of the heads of Political Parties giving an approval to the candidates that would be nominated and elected. Pitily, the members of the Local Parliament gave more attention to the voices of the political elites in their parties than to those of the people they represent. This is worsened by the fact that money politics occurred from the enrollment to the election, remembering it is the Local Parliament which determined who would be accepted to be candidates in the election.

Due to the problems, there was an idea to have a direct local head election by the people. It was realized by the issue of the 2004 Law No. 32 on the Local Government. The legal change in the election occurred in the ways of the election, from the candidates nominated by the fractions in the Local Parliament and then elected by the members of the Local Parliament into the candidates nominated by political parties with 15% voices from the number of chairs in the Local Parliament and directly elected by the people. The domination from the central government reduced, but the centralistic spirit was still strongly felt. This may still be seen from the ways the political parties nominated the candidates of governors, regents, and mayors that required some approvals from the DPPs of political parties with offices in Jakarta.

It should be understood that because of the legislation of the 2014 Law No. 23 on the Election of governors, regents, and mayors, changes in responsibility also occur, since if the regent/mayor is elected by the people, they should be responsible for the people, if they are elected by the Local Parliament, they should also be responsible for the Local Parliament. From the past experiences, if the regents/mayors were elected by the Local Parliament, they had difficulty to face political maneuvers made by the members of the Local Parliament when the regents/mayor reported their annual responsibility. This of course disturbed the operation of the government.

Moreover, the local head election by the Local Parliament has some weaknesses namely some imbalance and inequality between the local head as the implementer of the executive power and the Local Parliament as the legislative institution. It can be made certain that there will be a legislative-heavy government model since the local head should be responsible for the voters, namely the Local Parliament. If this happens, it is exactly contradicted with the idea of democratization requiring a trias politica-based check and balance. The local head will be treated as the “subordinate” by the Local Parliament and make a fool of the Local Parliament if the local head does not accommodate the political interest of the members of the Local Parliament. This condition would narrow down the local head’s freedom in making some innovations in developing his area.

From the description above, the number of problems faced by the local head elected by the Local Parliament is higher. Therefore, some changes should always be made for the betterment of the local head election implementation, but they should not be done revolutionary, but gradually in order to reduce some negative effects from the directly elected local head.

Referring to two stipulations stated in Article 18, verse (4) of the 1945 Constitution of the State of the Republic of Indonesia and Article 56, verse (1) of the 2004 Law No. 32 on the Local Government, no word is found stating that the local head election shall be directly implemented, but a word “democratically elected”. For that reason, the meaning of the word “democratic” should be more deeply discussed, since “democratic” may mean direct democracy, democracy through representation, or even a way that is not less democratic in value.

Consequently, the election of governors, regents, and mayors that has been directly implemented since the 2004 Law No. 23 prevails, should be cogitated upon that the election of governors, regents, and mayors may be done using three methods: democracy through representation by the Local Parliament, direct democracy by the people, or by acclamation. The three methods do not exceed the meaning “democratically elected”, so they do not break any stipulations stated in the 1945 Constitution of the State of the Republic of Indonesia.

The determination of whether the local head election will be directly, representatively, or acclamatively implemented depends on the will and readiness of each area. The local area with the Local Parliament, and all components of the people are given freedom to determine whether the local head will be directly, representatively, or acclamatively elected.

Consequently, since the implementation of local head election has been based on the will and readiness of each area, it can be surely stated that the local head election may be implemented respectfully without any loss of its democratic values. Now what area will try the local head election in line with the condition of the local people. Naturally, Indonesian people respect and appreciate a diversity, including something dealing with democracy.

On September 25, 2014, the Parliament “succeeded” in approving the local head election by the Local Parliament through voting with unequivocal scores, namely a direct local head election, 135 votes, the local

election by the Local Parliament, 266.1 It should also be understood that if the Law on the local head is elected by the Local Parliament, a consequence of responsibility will also change. If the regent/mayor is elected by the people, he will also make his responsibility for the people.

Dealing with the approval of the draft of a law becoming a law on the election of regents and mayors, massive refusal in various areas took place. Kompas, September 27, 2014 reported that there would be a mass refusal to the approval of the Law by collecting the identity cards to make a lawsuit.

Responding the plan to make a judicial review for the Law on the Local Head Election, the statement that the Local Head Election by the Local Parliament is in contradiction with the Constitutions means that it ignores the model of the democracy implementation. As if democracy is merely directly implemented by the people. It should be noted that the First Principle of the Pancasila (Five Basic Principles) says the “Kerakyatan yang dipimpin oleh hikmat kebijaksanaan, dalam permusyawaratan /perwakilan.” (Democracy is guided by wisdom in the parley/representative). It can be interpreted that any decision making may be done by deliberation or the representation institutions so that no constitutional basis exists to state that the local head election by the Local Parliament is in contradiction with the 1945 Constitution of the State of the Republic of Indonesia.

The constitutional right of the local head election is right to elect and to be elected. If the local head is elected by the Local Parliament, is there any constitutional right to be spoiled? It is assumed that if the local head is elected by the Local Parliament, it will close the chance of independent or individual candidates to enroll in this election. Is it right? It is the fractions in the Local Parliament that will propose the candidates! Therefore, the fractions may nominate independent candidates that are assumed to have a capacity and capability to be a local head. But it is still opposed that there is no guaranty that the fractions are willing to recommend individual or independent candidates.

The problem is that whether the loss of an individual candidate’s chance to become a local head is in contradiction with the 1945 Constitution? If in the past Law on the Local Government an individual candidate was possible, it did not mean that if the local head was elected by the Local Parliament, thus must have been an individual candidate. This should be corrected in the last Law on the Local Government that such an individual right exactly did not exist, and in the 1945 Constitution it is assured that each citizen has the right through the article 27 of the 1945 Constitution that “each citizen has an equal position in the law and the Government’. Except, in the Law on the Local Head Election, some prohibitions for certain individual to nominate or to be nominated in the Law are contained. If this happens, the citizens’ rights to be nominated and to nominate as a local head have been snatched.

If the judicial review of the Law on the Local Government are later entered with the argument that the constitutional right of most Indonesia people in the local head election is broken, since the local head election is under the domain of the Local Parliament, this argument will be easily rebutted that the people’s right to elect the local head has been given when they elect their candidates in the Local Parliament. It is assumed that the people have known that the local head is elected by the members of the Local Parliament, therefore they should be careful in electing the candidates because it is the members of the Local Parliament that play roles in electing the local head.

The local head election by the Local Parliament will make the citizens care about the candidates’ quality, because the citizens will entrust their rights to elect their local head to the elected candidates. The positive side if the local had election is made by the Local House of Representative is that the people will try to high-qualitymembers of the Local Parliament. Hopefully, this will give an effect on the quality local head elected.

As stated above that the local head election by the Local Parliament possesses a striking weakness, namely there will be imbalance and inequality between a local head holding an executive power and the Local Parliament as a legislative body. Therefore a legislative heavy-government model will be resulted in since he must be responsible for his voters, the Local Parliament. This even is in contradiction with the idea of democratization requiring a trias politica-based checks and balances system. This may narrow down the discretion of the local head.

From the descriptions above, it is clear that if a local head is elected by the Local Parliament is more 1 <http://www.tribunnews.com/nasional/2014/09/26/> the results of the voting by the House of Representative, it is decided that the Local Head Election is through the LocalParliament problematic than by the people. Therefore, any changes for the betterment of the implementation of the local head election must always be made in a gradual, instead of revolutionary way in order to reduce negative effects of the direct local head election.

Referring to two stipulations in the Article 18, Verse (4) of the 1945 Constitution of the State of the Republic of Indonesia and the Article 56, Verse (1) of 2004 Law No. 32 on the Local Government, there is no any word stating that the local head shall be directly elected, except the word democratic. Therefore the meaning of the word democratic should be more deeply discussed, since the word may mean a direct democracy, a representative democracy, or progressive democracy. The progressive democracy mean an acclamation by the whole people which may also show a democratic value. Dealing with this matter, Mardiyanto Wahyu

Triyatmoko in Kompas, September 16, 2014 in his article *Keluar dari Hitam Putih Pilkada* (Escaping from Black and White of the local head election) states that in the United States employing a presidential government system, all governors are directly elected by the people, but at the city or municipality levels the election of the local heads are not uniform, of which the comparison between the direct election and indirect election is 60:40.2 Meanwhile Janpatar Simamora (*Jurnal Mimbar Hukum*, Volume 23, Nomor 1 February 2011) concludes that the peoples' maximal sovereignty is at the local level.

Therefore, the direct election of governors, regents, and mayors that has been made since the 2004 Law No 32 prevailed should be reconsidered. They can be elected using three ways: the representative democracy, the direct democracy by the people or by acclamation. The three will not exceed the meaning of a democratic election, so that it will not break the stipulation as stated in the 1945 Constitution of the State of the Republic of Indonesia.

Whether it is the direct election, representative election or the election by acclamation, it is dependent upon the will and the readiness of each area. The local government and the Local Parliament and also all components of the people have a full freedom to determine the form of the election.

If the implementation of the local head election has been made on the basis of the will and readiness of each area, it can be surely stated that the election will run well without any loss of its democratic values. Now the local people should try to elect their local head employing the model in accordance with their condition, because naturally Indonesian people respect and value a diversity, including something dealing with democracy.

Debates on whether the local head election by the Local Parliament or by the people have abated when the 2014 Government Regulation to Replace Law No. 1 on the election of Governors, Regents and Mayors was issued, where in the Article 1 point 1 it is stated that the Election of Governors, Regents, and Mayors, thereafter Election is the implementation of the people's sovereignty at the Provincial and Regency/Municipal levels to elect the Governors, Regents, and Mayors directly and democratically. The Government Regulation indicates that the local heads are directly elected by the people. This way has been agreed upon by the Parliament in the approval of the Government Regulation.

IV. Conclusions

On the basis of the research results and discussions, some conclusions are made, namely:

- 1) Democratization in Laws on the local head election in Indonesia is always improved, from centralistic and authoritarian to democratic, from the local heads being determined by some persons in Jakarta to be elected by the peoples in the local areas.
- 2) This shift is really in line with the condition of this period requiring that the state, either at the central or local, should be managed democratically by involving the people in all policies taken in determining the heads in local areas. The shift in the legal institutionalization on the local head election should be supported by the characteristics and attitudes of democratic people.
- 3) The positive side of a democratic and participative local head election is a more legitimate local government, although from the past experiences, symptoms of money politics still occurred either in the local head election by the Local Parliament or by the people. This shows that people's attitudes have been stagnant, especially among the political elites when a change of regulations has been made.

2 Mardiyanto Wahyu Triyatmo, *Keluar dari Hitam Putih Pilkada*, artikel opini, Kompas, 16 September 2014 p.6.

It can be stated that the implementation of local head election, directly elected by the people, even has shown a minimal democratization due to high number of voters who did not make use of their right to vote – the white group.

Acknowledgement

Thanks to the Directorate of Research and Community Service (DP2M0) University of Muhammadiyah Malang who has given us the opportunity to conduct research that is managed by DP2M. Hopefully this research useful for the organization of local government in Indonesia.

V. BIBLIOGRAPHY

Bambang Pujiono, *Sinar Harapan*, 31 Juli 2003

Heru Nugroho, *Berakhirnya Demokrasi di Era Reformasi*, Kompas, 5 Desember 2005

Mahfud MD, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, Pustaka LP3ES, Indonesia, Jakarta, hal 133-135.

Mardiyanto Wahyu. *Triyatmoko, Keluar dari Hitam Putih Pilkada*, Kompas, 16 September 2014

Nonet, Philippe & Philip Selznick, 2003, *Hukum Responsif, Pilihan di Masa Transisi*, Huma, Jakarta

Janpatar Simamora, *Eksistensi Pemilukada dalam rangka mewujudkan Pemerintah Daerah yang Demokratis*, *Jurnal Ilmah Mimbar Hukum*, Volume 23, Nomor 1, Februari 2011, hal 235

<http://www.tribunnews.com/nasional/2014//09/26/>, diakses tanggal 26 September 2014

Jawa Pos, 15 September 2013

Kompas, 27 September 2014

Kompas, 5 Desember 2005

Mahkamah Konstitusi RI, Volume 4 Nomor 3, Jakarta, September 2007

Perpu No. 1 tahun 2014 tentang Pemilihan Gubernur, Bupati, dan Walikota

Suara Merdeka, 29 Juli 2014

UUD Negara RI 1945

UUD 1945

UU No 5 tahun 1974 Tentang Pokok Pokok Pemerintahan Daerah

UU No 18 tahun 1965

UU No 22 tahun 1999 Tentang Pemerintah Daerah

UU No 23 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, dan Walikota

UU No 32 tahun 2004 Tentang Pemerintah Daerah

YLBHI, et al, Kembali Ke Kedaulatan Rakyat, Pandangan Terhadap Perubahan Konstitusi, Rekomendasi Kepada Panitia AD-Hoc MPR Amandemen UUD 1945.

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:

<http://www.iiste.org>

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: <http://www.iiste.org/journals/> All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: <http://www.iiste.org/book/>

Academic conference: <http://www.iiste.org/conference/upcoming-conferences-call-for-paper/>

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library, NewJour, Google Scholar

