

## Democratic regional head elections are based on the principles of freedom, openness, honesty and fairness

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### Abstract

*Direct regional elections are a concrete manifestation of the formation of democratization in the regions. Direct regional head elections must be included in the larger framework for realizing democratic local government. The aim of holding direct regional elections is to form a strong government based on the choice and legitimacy of the people. Direct regional elections are a concrete manifestation of the formation of democratization in the regions. The type of research used is empirical normative legal research, this type of research combines normative law which is supported by information from empirical data. Application of normative legal provisions in action in every specific legal event that occurs in society. Direct regional head election is a necessity to correct deviations in the implementation of regional autonomy shown by elites at the local level. Holding honest, fair and clean elections.*

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## 1. INTRODUCTION

Apart from being a country based on law as explained in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, Indonesia is also a democratic country, this is characterized by the implementation of free and honest elections which is one of the basic principles of a democratic country. According to its origin, the term democracy means the people rule, or in Greek it means demos which means people and kratos which means power. Afan Gafar explained that in a normative understanding, democracy is something that a country ideally wants to do or organize, as in the expression "government of the people, by the people and for the people".

Elections are intended as an embodiment of people's sovereignty and as a means of constitutionally replacing leaders to realize government reform in a better direction, one of which is the election of regional heads, both regional heads at the provincial and district/city levels. The first direct election of regional heads for Governors, Regents and Mayors was held in 2015, until now the implementation has been carried out simultaneously in order to make the process of selecting state administrators more effective and efficient. According to Rahardian Prima Nugraha, regional head general elections are an arena for competition to fill political positions in government based on the formal choice of qualified citizens.

The policy of direct regional head elections has been agreed with the issuance of various laws and regulations regarding regional head elections (Pilkada), which include Law Number 1 of 2015 concerning the Stipulation of Government Regulation Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law. -Law, Law Number 8 of 2015 concerning amendments to Law Number 1 of 2015 concerning the Election of Governors, Regents and Mayors into Law, Law Number 10 of 2016 concerning the second amendment to Law Number 1 of 2015 concerning The election of Governors, Regents and

Mayors became law, and finally Law Number 6 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Election of Governors, Regents, and Mayor.

The regional head as the leader of a region has a very big role in elections, basically the regional head is someone who is chosen through elections and has the duties and authority to lead, regulate and manage their respective autonomous regions in accordance with the principles of decentralization. The duties of regional heads in regional head elections include providing population data and assisting in the distribution and security of voting equipment as regulated in Article 78 paragraph 8 of Law Number 10 of 2016. Article 66 explains that regional governments support the implementation of elections by providing opportunities to use them. public facilities for campaign activities at the Provincial KPU and Regency/City KPU. Then in article 82 paragraph 2 it is explained that regional governments can ask for assistance to secure ballot papers during the process of printing, storing and distributing them to their destination. Apart from that, article 133A also explains that Regional Government is responsible for developing democratic life in the region, in particular increasing community participation in exercising the right to vote.

The role of regional government as explained above is of course very much needed in implementing regional head elections with the main aim being to create democratic regional head elections and fulfill the principles in elections. However, this does not always work as expected, the potential for violations of the Election Law and other regulations is very possible. These violations include abuse of power committed by incumbents (Governor, Regent and Mayor).

Regulations regarding the prohibition of abuse of authority in regional head elections are regulated in Article 71 of Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors, which explains that:

1. State officials, regional officials, state civil servant officials, members of the TNI/POLRI, and Village Heads or other names/Lurah are prohibited from making decisions and/or actions that benefit or harm one of the candidate pairs.
2. The Governor or Deputy Governor, Regent or Deputy Regent, and Mayor or Deputy Mayor are prohibited from replacing officials 6 (six) months before the date of determining the candidate pair until the end of the term of office unless written approval is obtained from the Minister.
3. The Governor or Deputy Governor, Regent or Deputy Regent, and Mayor or Deputy Mayor are prohibited from using authority, programs and activities that benefit or harm one of the candidate pairs either in their own region or in another region within 6 (six) months before the date of appointment of the candidate. candidates until the determination of the selected candidate pair.
4. The provisions as intended in paragraph (1) to paragraph (3) also apply to acting Governors or Acting Regent/Mayor.
5. In the event that the Governor or Deputy Governor, Regent or Deputy Regent, and Mayor or Deputy Mayor as the incumbent violates the provisions as intended in paragraph (2) and paragraph (3), the incumbent is subject to the sanction of cancellation as a candidate by the Provincial KPU or Regency/City KPU.
6. Sanctions as intended in paragraphs (1) to paragraphs (3) for non-incumbents are regulated in accordance with applicable laws and regulations.

In article 71 paragraph 3 above, it is explained that every regional head, whether governor or deputy governor, regent or deputy regent, as well as mayor or deputy mayor, is prohibited from using their authority as regional head in a way that can benefit or harm one of the candidate pairs within 6 months before the date determination of candidate pairs until

the determination of candidate pairs. This article also of course applies to regional heads who will run again in the election.

Regulations related to the prohibitions contained in Article 71 paragraph 3, are still often violated by regional heads who will take part in the election or incumbent candidates, in the 2020 regional elections which were held in the midst of the non-natural disaster Covid-19. Bawaslu in 6 regions issued recommendations for canceling candidate pairs. incumbents who are suspected of abusing their authority/programs/and/or activities to benefit themselves, one example of the case is the abuse of authority committed by candidates for Regent and Deputy Regent of Gorontalo Regency number 2 Nelson Pomalingo and Hendra S. Hemeto, who at that time were Nelson Pomalingo is the active Regent of Gorontalo Regency. The abuse of authority in question occurred in the implementation of tourist exploration activities and the procurement and delivery of fisheries social assistance.

The alleged abuse of authority by Nelson Pomalingo began when the Bawaslu of Gorontalo Regency received a public report that the Regent, Nelson Pomalingo, who is also a candidate for Regent of Gorontalo Regency, abused his authority by carrying out tourist exploration activities, which according to the Gorontalo Tourism Calendar schedule, these activities should have been scheduled for October 2020 but was then moved forward to July 2020 before the incumbent went on campaign leave. According to Bawaslu, Regent Nelson Pomalingo, who is also a candidate for Regent based on his authority, deliberately made a change to the Gorontalo tourism exploration schedule with the aim of campaigning for his image during this activity. This is because in October 2020, which is the supposed schedule for Gorontalo tourist exploration activities, Regent Nelson Pomalingo is obliged to go on campaign leave.

The material of the second report is the alleged abuse of authority in the process of procuring and handing over fisheries social assistance carried out by the Regent of Gorontalo Regency who is also a Candidate for Regent of Gorontalo Regency, namely by the activity of handing over fisheries social aid which was carried out after Regent Nelson Pomalingo was declared as candidate for Regent of Gorontalo number 2 with the representative being Hendra S Hemeto.

Based on preliminary data obtained from the Gorontalo Regency Bawaslu, the fisheries social assistance handed over was 14 units of fiber boats, 160 units of gill nets, 25 units of cool boxes, and 1,142 units of Styrofoam. The handover took place in the Gorontalo Regency Fisheries Service Office Hall on September 14 2020.

Based on the data above, it can be seen that the delivery of fisheries social assistance carried out by the Regent of Gorontalo, Nelson Pomalingo, occurred 10 days before the determination of the candidate pair for Regent and Deputy Regent of Gorontalo Regency for 2020, namely September 23 2020, at which time Nelson Pomalingo had been registered by the coalition. The party as a candidate for Regent is paired with Hendra Hemeto as a candidate for Deputy Regent, so that the incumbent status has been attached to brother Nelson Pomalingo. This is of course contrary to the mandate of Article 71 paragraph 3 of Law Number 10 of 2016 as explained above, where the regent is prohibited from using his authority. beneficial or detrimental to one of the candidate pairs within 6 (six) months before the date of determination of the candidate pair until the determination of the selected candidate pair.

Based on reports of alleged violations of abuse of authority committed by the Gorontalo Regency Regent candidate pair number 2 Nelson Pomalingo-Hendra Hemeto as explained above, the Gorontalo Regency Bawaslu issued recommendation Number: 210/K.GO-03/PM-06.02/X/2020 which recommended that the Gorontalo Regency KPU disqualify candidate pair number 2 for violating the provisions of the statutory regulations. However, this recommendation was not fully implemented by the Gorontalo Regency KPU and still

included the candidate pair for Regent and Deputy Regent number 2 Nelson Pomalingo - Hendra Hemeto.

The Gorontalo Regency General Election Commission, based on recommendations from the Gorontalo Regency Bawaslu, has followed up on these recommendations by issuing follow-up recommendations from the Gorontalo Regency General Election Supervisory Board regarding Alleged Election Administration Violations Number: 658/KPU-Kab/X/2020.

The Gorontalo Regency KPU in legal considerations number 10 explains that based on information, facts and evidence, the fisheries assistance referred to is sourced from additional Regional Incentive Funds (DID) as stipulated in PMK Number 87 of 2020, the use of which is prioritized to encourage economic recovery in the Region, including supporting small industry, micro, small and medium enterprises, cooperatives and traditional markets as well as handling COVID-19. In legal consideration number 11, the Gorontalo Regency KPU explains that based on information, facts and evidence, tourist exploration activities are activities initiated by the automatic motorbike community which are facilitated by the Gorontalo Regency tourism office and have no budgetary consequences even though there is a Regional Secretary's decision letter number: 163/ 16/VII/2020 concerning the formation of the organizing committee for archipelago cruising activities with the Gorontalo district motorbike community in 2020.

In number 12, the Gorontalo Regency KPU explains that in relation to the provisions of Article 71 paragraph 3 of Law Number 10 of 2016 in conjunction with Article 90 paragraph 1 letter f of KPU Regulation Number 1 of 2020, what is being questioned is the existence of activities carried out by incumbents in connection with their duties. positions that must be held in order to continue to function and be tasked with running the governance of Gorontalo Regency before being appointed as a candidate pair for Regent and Deputy Regent, especially as the Regent's position as chairman of the Covid-19 Task Force, of course the regent's functions and duties must be carried out or carried out as long as the reported party is still Regent. and have not taken leave outside the state's responsibility.

## **2. RESEARCH METHOD**

The type of research used is empirical normative legal research, this type of research combines normative law which is supported by information from empirical data. The application of normative legal provisions in action in every particular legal event that occurs in society is also a concern in this empirical normative research technique. The decision to conduct this form of research is based on the normative legal school of thought, but will focus more on the interactions and responses that occur when norms are applied in society rather than on the system of norms included in statutory regulations.

## **3. RESEARCH RESULTS AND DISCUSSION**

Recruitment of Regional Heads is entirely within the control of the DPRD. Meanwhile, the central government only determines and inaugurates Regional Heads based on the results of elections conducted by the local DPRD. According to Law no. 22 of 1999, regional government consists of regional heads and regional officials. The DPRD is outside the regional government, which functions as a regional government legislative body to oversee the running of the government.

In this period, regional heads are elected entirely by the DPRD, there is no longer any interference from the Central Government. This is different from the previous system, where regional heads were appointed by the President or Minister of Home Affairs, who were proposed or proposed by the DPRD. If we look at the comparison of regional elections during the reform era and the New Order era, it can be said that regional head elections in

the reform era were more democratic. However, the facts show that the authority of the DPRD and its factions is very strong and this has resulted in abuse of authority such as the rise of money politics at the DPRD level.

Responsible to the DPRD, while according to Law no. 32 of 2004 Regional heads and deputy regional heads are elected as a pair directly by the people of the region concerned. Candidate pairs for regional head and deputy regional head can be nominated either by a political party or a combination of political parties participating in the General Election which obtain a certain number of seats in the DPRD and/or receive a certain number of vote support in the Legislative Election.

The implementation of direct regional elections has covered the deficiencies in the previous law. As an implementation of the amendment to the Constitution of the Republic of Indonesia, there has been a change in the system of administering state government where the President is elected directly by the people, as well as Regional Heads are also elected directly by the people.

In the implementation of direct regional elections according to Law no. 32 of 2004 still involves political parties, the difference is with Law no. 22 of 1999, political parties are outside parliament and are used to legalize candidacy. This method is used to avoid political party deals in the DPRD and avoid the practice of KKN.

UU no. 22 of 2014 has resulted in a change in the mechanism for direct regional elections by the people to indirect through the DPRD. Improvements to the provisions of laws and regulations governing the election of governors, regents and mayors through the Provincial DPRD and Regency/City DPRD are intended to put in place mechanisms for the democratic election of governors, regents and mayors and strengthen efficient and effective regional governance in the construction of the State government system The Unitary Republic of Indonesia based on the principle of decentralization.

The function and role of the Regional Head is very large in carrying out regional tasks, especially autonomy tasks. Therefore, the success or failure of regional tasks really depends on the regional head as the spearhead of the region concerned. The success of someone in office

A position in carrying out its duties certainly depends on the quality of leadership it has. Likewise, for someone who holds the position of Regional Head, success in carrying out his duties depends on the quality of leadership he has.

In a system of popular sovereignty, supreme power is in the hands of the people. This power essentially comes from the people, is intended for the people, and is managed by the people. Democracy cannot just be used as mere lip service and rhetorical material. Democracy also does not only involve the institutionalization of noble ideas about ideal state life, but is also a matter of egalitarian political traditions and culture in the reality of social life that is diverse and respects differences.

Democracy in the narrow sense according to Joseph Schumpeter, is a political method and a mechanism for electing political leaders. Citizens are given the opportunity to choose one of the political leaders who compete for votes and in the next election, citizens can replace their elected representatives. previously selected. The ability to choose between leaders during the election period is what is called democracy.

In Law No. 32 of 2004 concerning Regional Government, as amended into Law No. 12 of 2008 concerning Regional Government, citizens who have the right to vote must also be involved in voting in the election process. Citizen participation in elections is expected to be high so that the election results have strong legitimacy. However, citizen participation in voting must remain in the corridor of political freedom and civil liberties, without fear of intimidation, and still have a sense of security. Regarding this matter, Jimly Asshiddiqie stated "The freedom of individual citizens must be guaranteed, but the power of the State

must also stand firm, so that order in society and the state is created. Order itself is realized if effective power is maintained and the freedom of citizens is not disturbed.

Contestants/election participants and fellow citizens must respect political freedom and civil liberties both towards fellow contestants and fellow citizens. As long as there is no guarantee of this freedom, local elections will be far from democratic. However, these normative requirements are sometimes ignored by both the contestants and their supporters so that various post-conflict regional election frauds are very visible, and this is certainly a threat to democracy.

Regional head elections are said to be democratic if they fulfill several conditions, including the conditions that apply to legislative elections in general, namely:

1. There is recognition of universal suffrage. All citizens who have the right to vote must not be discriminated against on ideological and political grounds;
2. The existence of a forum for the plurality of aspirations of the voting public so that people have alternative choices of channels for their political aspirations;
3. Democratic political recruitment mechanisms are available;
4. There is freedom for voters to make their choice;
5. The existence of an independent selection committee;
6. There is freedom for contestants to compete in a healthy manner;
7. Honest vote counting; And
8. Bureaucratic neutrality.

In a democracy, all parties should continue to uphold the values of honesty, respect for each other, and obey the rules. In the Regional Head Election, of course no pair of regional head candidates wants to lose, everyone definitely wants to win, but like a match, in the end there will only be 1 (one) pair of candidates who will be the winner. Of course, the winner cannot be arbitrary, the loser must not be angry with various actions. If you feel you have been treated unfairly and have sufficient evidence of fraud that is giving rise to a dispute, submit it to the Constitutional Court of the Republic of Indonesia (MKRI).

Elections should be held in a free and clean manner, namely elections that give every voter the freedom to cast their vote for candidates or political parties of their own choice. This means that all tactics and methods based on money politics, service ties and intervention must be prohibited by law.

Regulations (arrangements) regarding clear boundaries are needed which state that general election campaigns may be carried out. The Indonesian Constitution regulates elections in Indonesia in the 1945 Constitution Article 22E, to guarantee the rights of the Indonesian people to elect leaders and representatives of their choice. Article 22E of the 1945 Constitution explains that elections are held directly, publicly, freely, confidentially, honestly and fairly once every five years in accordance with Law Number 15 of 2011 concerning General Election Organizers.

Election of Governors, Regents and Mayors according to Law no. 22 of 2014 which regulates the mechanism for indirect regional head elections through the DPRD has received rejection from the wider community because the decision-making process does not reflect democratic principles. Therefore, the law was revoked with the issuance of Perpu no. 1 of 2014. Then the Perpu was passed into the Law concerning the Election of Governors, Regents and Mayors.

Provisions in Government Regulation in Lieu of Law no. 1 of 2014 which has been stipulated as Law no. 1 of 2015, it is felt that there are still several inconsistencies and leave a number of obstacles if implemented, therefore it needs to be refined. Some of these improvements include: election implementation, stages of election implementation, candidate pairs, requirements for individual candidates, determination of selected candidates, candidate requirements and simultaneous voting.

According to Article 3 of Law No. 22 of 2014, the Governor is elected by members of the Provincial DPRD democratically based on the principles of freedom, openness, honesty and fairness. Meanwhile, regents and mayors are elected by members of the Regency/City DPRD democratically based on the principles of freedom, openness, honesty and fairness.

#### 4. CONCLUSION

Direct regional head election is a necessity to correct deviations in the implementation of regional autonomy shown by elites at the local level. Organizing honest, fair and clean elections. according to Law Number 7 of 2017, it is an attitude that must be maintained, there must be no fraud in the election in accordance with applicable laws and regulations, it is fair, which means that every voter has the right to receive the same treatment without any barriers to which group he comes from or which party he belongs to. Either way, don't get cheated. and clean in realizing the principles of overflow in elections, several efforts were made by the General Election Commission, namely, sticking to existing rules. Work in accordance with binding regulations. Accommodate the public so that they are registered on the voter list and have voting rights. Be fair to voter participants without any discrimination or equalization of election participants.

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