

The Meaning Of Filling The Position Of Regional Head Democratically Under The Provisions Of Article 18 Paragraph (4) Of The 1945 Constitution

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Abstract

The various laws governing local elections are; i). Law No. 1 of 2015 on the establishment of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law. ii). Law of the Republic of Indonesia No. 8 of 2015 on amendments to Law No. 1 of 2015 on the establishment of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law; iii). Constitutional Court Decision No. 100/PUU-XIII / 2015 related to the law of the Republic of Indonesia No. 8 of 2015 on amendments to Law No. 1 of 2015 on the determination of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law; iv). Law No. 10 of 2016 on the Second Amendment To Law No. 1 of 2015 on the establishment of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law v). Law No. 6 of 2020 on the establishment of government regulations in lieu of Law No. 2 of 2020 on the Third Amendment to Law No. 1 of 2015 on the establishment of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law into law. The research method used is normative legal research with a statute legal approach and a conceptual approach. the results of this study are Head Department filling model Regions experienced changes from time to time influenced by the political law of forming laws, regional privileges, and regional autonomy system adopted by the prevailing regime of government. Provisions on filling the position of Regional Head contained in Article 18 paragraph (4) of the law of the Republic of Indonesia in 1945, not should be interpreted by direct election by the people in each region, but can different, especially for special areas.

I. Introduction

The provisions of the Constitution of the Republic of Indonesia year 1945 (UUD 1945) after the amendment relating to local elections, regulated in Article 18 of the Constitution 1945. The substance of Article 18 in full as follows; Paragraph (1) The Unitary State of the Republic of Indonesia is divided into provincial areas and the provincial area is divided into districts and cities, each of which has a local government, which is regulated by law. Paragraph (2) The Provincial, District, and municipal governments regulate and manage their own government affairs according to the principle of autonomy and co-administration. Paragraph (3) The Provincial, District, and municipal governments shall have a regional people's Representative Council whose members are elected by general election. Paragraph (4) governors, regents, and mayors respectively as heads of Provincial, District, and city local governments are democratically elected. Paragraph (5) local governments exercise their full autonomy, except for matters of government which are defined by law as matters of the Central Government. Paragraph (6) The Local Government shall have the right to establish local regulations and other regulations to implement autonomy and co-operation tasks. Paragraph (7) the structure and procedures for the administration of local government shall be stipulated in the law. In paragraph (4) that in each unit of local government, there are officials called governors, regents, and mayors as heads of democratically elected local governments. According to Jimly Asshiddiqie, there are two important things, first, Article 18 paragraph (4) only mentions the Governor, Regent, and Mayor, does not mention the Deputy Governor, Deputy Regent, and Deputy Mayor. Whether or not the deputy position is held is left to the consideration of needs and what is important must be regulated in undang-undang. However, for the sake of efficiency and ensuring the integrity of government leadership in the region, especially considering the large number of political parties that are in coalition with each other in filling the position of regional head, it is better if the deputy position is eliminated; Second, the provision of democratic elections in paragraph (4) can be implemented, either through direct means by the people or by indirect means through the DPRD. Both ways are equally democratic and therefore constitutional. It's just that, today, this provision is further spelled out in the law, namely that the election is carried out through the general election of regional heads or abbreviated as *pemilukada*. However, if at any time changes will be made so that elections are held indirectly through the DPRD, then it must also be viewed as equally democratic and equally constitutional.¹

Historically alternated laws governing the mechanism of local elections since independence until today. The various laws governing local elections are; i).Law No. 1 of 2015 on the establishment of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law. ii).Law of the Republic of Indonesia No. 8 of 2015 on

¹ Jimly Asshiddiqie, *Komentor Atas Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta : Sinar Grafika, Cetakan Kedua, Juni 2013, Hlm.58-59.

amendments to Law No. 1 of 2015 on the establishment of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law; iii). Constitutional Court Decision No. 100/PUU-XIII / 2015 related to the law of the Republic of Indonesia No. 8 of 2015 on amendments to Law No. 1 of 2015 on the determination of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law; iv). Law No. 10 of 2016 on the Second Amendment To Law No. 1 of 2015 on the establishment of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law v). Law No. 6 of 2020 on the establishment of government regulations in lieu of Law No. 2 of 2020 on the Third Amendment to Law No. 1 of 2015 on the establishment of government regulations in lieu of Law No. 1 of 2014 on the election of governors, regents, and mayors into law into law.

The essence of elections is a process by which the people transfer sovereignty to their representatives. There are two aspects in the general election, namely, the use of people's sovereignty directly, the second is to choose their representatives and simultaneously transfer the exercise of sovereignty through representatives. Article 22e Paragraph (2) which reads "general elections held to elect members of the House of Representatives, the House of regional representatives, the president and vice president, the House of Regional Representatives is a form of representative democracy". This is where the will or sovereignty of the people is dispersed in representative institutions.² The representative institution will carry out the part of the people's sovereignty that has become its portion. In accordance with the Basic Law, there are three pillars of representative institutions in Indonesia, namely:³ the House of Representatives (DPR), the House of regional representatives (DPD), and the president. All three are forms of institutions derived from the aspirations of the people, although there is no word "representative" in mentioning the name of the presidential institution, because it is also a reflection of the people's representatives. Therefore, the three institutions have the same position to get the mandate or trust directly from the people. And then the three are given a mandate by the people to perform their functions in accordance with their respective portions, namely, the function of law makers is given to the DPR and the president, the function of "constituents" of the 1945 Constitution is given to the DPD and DPR and they are included in the same forum, namely the MPR.

Direct elections are the embodiment of the Constitution and the Constitution of 1945 as mandated in Article 18 paragraph (4) of the 1945 Constitution, governors, regents and mayors, each of which is the head of the province, Regency and City, are democratically elected. This has been regulated in Law No. 32 of 2005 concerning the election, ratification, appointment, and dismissal of regional heads and deputy regional heads. One of the questions that is

² Muhammad Afied Hambali, *Pemilukada Pasca Reformasi Di Indonesia*, Journal : RECHSTAAT Ilmu Hukum Fakultas Hukum UNSA, Vol. 8 no. 1 Maret 2014 ISSN : 1978-6697 hlm 2

³ Fradhana Putra Disantara, Dicky Eko Prasetyo, and Badrudin Kurniawan, "Ethical Challenges and Political Corruption in the 2024 Elections: A Perspective on Dignified Justice," *Nagara Law Journal* 1, no. 2 (2024): 13–27.

difficult to be answered by most people and become a precondition for democracy in Indonesia is who the people's representatives who represent their regions today, giving rise to quovadis which raises the distance between the people's representatives and the people they represent during the General Election (Election).⁴ One of the basic requirements of democracy is the existence of an honest and fair electoral system (free and fair elections). For modern democracies, elections are the main mechanism that must exist in the stages of State Administration and government formation, elections are seen as a real form of popular sovereignty and the most concrete form of people's participation in state administration.⁵

In general, elections, among others, are held in the implementation of popular sovereignty. For that below is the benefit of the election :⁶

1. Elections are intended as the embodiment of popular sovereignty. Democracy is in the hands of the people.
2. So that the people can determine the representatives of the people who will regulate the course of government.
3. Elections are used as a means to form political representation. So that the people can choose a representative who can be trusted. And can represent the aspirations and interests of the people who choose it. So the higher the quality of the election, the better the quality of the people's representatives.
4. The election was used as a means to replace the constitutional leader. Elections were held to realize Government Reform. Through local elections, an aspirational government can gain the confidence of the people to lead again. Or vice versa, if the people do not believe then the government will end and replaced.
5. Elections as a means of political leaders in obtaining legitimacy. Basically, voting is a mandate given by the people to leaders who are trusted to run the government. Elected leaders will gain legitimacy from the people.
6. Elections are a means of political participation. The people are able to directly determine public policy through their support. Next, the elected leader must fulfill his promises.

In relation to the mechanism of Democratic regional elections under Article 18 paragraph (4) of the Constitution of the Republic of Indonesia year 1945, which reads "the Governor, Regent, and Mayor respectively as the head of the provincial government, Regency, and City are elected democratically", should not be interpreted as direct local elections as stipulated in the law , but also regional elections through representatives throughout the Democratic and constitutional. The provisions of Article 18 paragraph (4) contain the understanding that the mechanism of local elections is still open opportunities or possibilities to be implemented indirectly or based on the representation system by the regional people's Representative

⁴ Firman Noor, *Quo Vadis Demokrasi Kita, Sebuah Respon Terhadap Konsolidasi Demokrasi Indonesia*, Jakarta, Wahana Semesta Intermedia, 2002 hlm 106

⁵ Ganda Surya Satya Johni Arifin Putra, *Membangun Politik Hukum Pemilu Yang Demokratis Dengan Membumikan Konsep Negara Hukum Pancasila*, MMH, Jilid 43 No. 2, April 2014 hlm 198

⁶ Fradhana Putra Disantara et al., "EKSTENTIFIKASI KEWENANGAN MAJELIS KEHORMATAN MAHKAMAH KONSTITUSI DALAM MEMPERKUAT GAGASAN CONSTITUTIONAL ETHICS," *LITIGASI* 1, no. 24 (April 30, 2023): 40-63, <https://doi.org/10.23969/litigasi.v24i1.7232>.

Council (DPRD). Because the term "Democratic" in Article 18 paragraph (4) cannot be interpreted only by direct elections by the people,⁷ but can also be interpreted as indirect elections by the DPRD or by a representative system. Changes in the political system and state power after the amendment of the 1945 Constitution provide a new color for the democratic system in Indonesia, this can be seen and felt with the shift has brought fresh air for the development of democratic ideals and parliament supremacy leads to constitutional supremacy, so that the people's sovereignty (sovereignty of the people) which was, the understanding of the 1945 Constitution Amendment should be intended as a manifestation of the birth of the power of mutual control and balancing checks and balances between state powers. In relation to the election of regional heads, according to Ramlan Surbakti, the election is a mechanism of selection and delegation. Or transfer of sovereignty to a trusted person or party.

Based on the description in the background above, there are things that become the main issues that will be examined and answered in research related to "the meaning of filling the position of Regional Head democratically under the provisions of Article 18 paragraph (4) of the Constitution of the Republic of Indonesia year 1945", namely as follows: What Is The Regulation Of Local Elections After The Amendment Of The Constitution Of The Republic Of Indonesia In 1945? And How should we interpret the filling of the position of Regional Head democratically according to Article 18 paragraph (4) of the Constitution of the Republic of Indonesia year 1945?.

2. Research Method

This study uses the type of normative legal research. Normative legal research is a type of research that assesses a legislation and conducted by conducting research literature, research approach methods law consists of legislation approach, conceptual approach and case approach. But in this study, the approach used, namely the approach of legislation, this means that a problem will be seen in terms of legal aspects and also by reviewing the legislation which is then associated with the problems discussed, regarding the responsibility of heirs in the return of state assets resulting from corruption committed by convicts who died. In addition, the sources of legal materials used in this study, namely primary and secondary legal materials where according to that there are three sources of legal materials, namely primary, secondary, and tertiary.

3. Results and Discussion

The fundamental issue of local elections in general is concerned with the understanding and meaning of the word "democratic" which is then debated to be direct elections that are called democratic and other opinions that state indirect elections can actually also be democratic. The regional head election mechanism is called democratic if it meets several parameters. Robert Dahl, Samuel Huntington said that the parameters to observe the realization of democracy

⁷ I Gede Agus Kurniawan, "The Reconstruction of Subjectum Litis in Term of Reflections on Constitutional Dissolution of Political Parties," *Jurnal Akta* 9, no. 1 (2022): 104–19, <https://doi.org/http://dx.doi.org/10.30659/akta.v9i1.20970>.

include: elections, rotation of power, recruitment openly, and public accountability.⁸ Leo Agustina, at least it can be interpreted that the Constitution does not want to include local elections in the sense of general elections as meant in Article 22e paragraph (1) which states “general elections are held directly, generally, freely, confidentially, honestly, and fairly every five years”.⁹ When looking at the perspective of the map of democracy in the Asian region from the results of research Farahdiba stated that Indonesia is also a pilot for countries in the world, especially among developing countries and Asian countries.¹⁰ Indonesia takes a leading role in existing democracies. When looking at the election model Indonesia has its own characteristics when compared with other democracies both in Asia and other regions, including the United States though. Indonesia has a tiered government structure so that Indonesian general elections (pemilu) are held at almost all levels in the power structure at both the executive and legislative levels. starting from the presidential election as head of State to the village heads who rule at the lowest level in the executive structure, as well as the legislature elected at the regional and central levels.

Thus the democratic process in the electoral system in Indonesia can be said to be a long and laborious process even at high cost.¹¹ Iksan stated that there are at least three groups of the first cost, the cost of organizing the regional election. Second, the costs incurred for political parties (in practice is the cost incurred to be nominated by a political party).¹² Third, the costs incurred for the purposes of the election campaign. The inevitable reality in direct local elections is that capitalization appears in the stages of local elections. With the emergence of this capitalization, direct elections are much more expensive than the model of local elections through representatives of Parliament. One of the challenges in the election is the rampant practice of money politics (money politics) which takes place almost at all levels of elections.

Ari Dwipayana, said that money politics is one of the factors causing high-cost democracy. Everyone knows that cases of money politics are a common thing in elections after the reform. Although all candidates if asked will always say that they are not involved in money politics, citizens will soon be able to point to how the candidates are using the money to “buy votes” in their constituencies. According to Daniel Dhakidae, this money politics is a link in the formation of political cartels. Representative democracies that rely on votes are easily transformed into a commodity, to be sold when they have been obtained and bought when they have not been

⁸ Saukani HR, Affan Gaffar, dan Ryass Rasyid, *Otonomi Daerah dalam Negara Kesatuan*, Pustaka Pelajar, Yogyakarta, 2002 hlm 16. dalam Abdul Kahar Maranjaya, *Pilkada Bermartabat Pasca Perubahan UUD NRI 1945*, Banyumas Jawa Tengah: Penerbit Wawasan Ilmu, Cetakan Pertama: November 2022. Hlm.2

⁹ Leo Agustina, *Pilkada dan Dinamika Politik Lokal*, Pustaka Pelajar, Yogyakarta, 2009.

¹⁰ Farahdiba Rahma Bachtiar, *Pemilu Indonesia: Kiblat Negara Demokrasi Dari Berbagai Representasi*, Jurnal Politik Profetik Volume 3 Nomor 1 Tahun 2014.

¹¹ Iksan Darmawan, *Menata Pengaturan Pemilu*, Departemen Politik FISIP Universitas Indonesia, 2009, hlm 2. Dalam Abdul Kahar Maranjaya, *Pilkada Bermartabat Pasca Perubahan UUD NRI 1945*, Banyumas Jawa Tengah: Penerbit Wawasan Ilmu, Cetakan Pertama: November 2022. Hlm.2

¹² Amirudin dan A. Zaini Bisri, *Pilkada Langsung: Problem dan Prospek*, Pustaka Pelajar, Yogyakarta, 2006, hlm.59. dalam Abdul Kahar Maranjaya, *Pilkada Bermartabat Pasca Perubahan UUD NRI 1945*, Banyumas Jawa Tengah: Penerbit Wawasan Ilmu, Cetakan Pertama: November 2022. Hlm.2

obtained. Bought at election time with all techniques and sold with all techniques . Observing Law Number 7 of 2017 concerning general elections article 167 paragraph (4), the stages of election implementation include: (a) planning programs and budgets and drafting election implementation regulations; (b) updating voter data and preparing voter lists; (c) registration and verification of election participants; (d) determination of election participants, as well as; (e) determination of the number of seats and the determination of electoral districts. Next: (f) nomination of the president and vice president, as well as members of DPR, DPD, DPRD provincial, and DPRD Regency/city; (g) election campaign period; (h) period of calm; (i) voting and counting of votes; (j) determination of election results, and; (k) oath/promise of the president and vice president, as well as members of DPR, DPD, DPRD provincial, and DPRD Regency/city. The length of the process chain and the extent of territorial adequacy certainly have great implications for the needs or expenditure of election funds both issued by the government and individual legislative and executive candidates, as in the general election in 2014 the KPU allocated Rp4, 012, 595, 222, 200 for the purposes of organizing the presidential election.

Back to the elections and to which has been going on since June 2005 until now in general has taken place in a safe, orderly, and democratic with a fairly high level of participation. The benefits that can be obtained from the change are increasingly Democratic regional government, political processes are increasingly sharp and friction between political parties that will inevitably arise. In addition, the community will get to know the leader more closely, because the community will directly determine who is the leader in the area. While the disadvantage is, through the pattern of recruitment in a multi-party system, there will be opportunities for the recruitment of political officials who do not understand the ins and outs of local government and of course it is a regional disadvantage . To attract candidates who really have the vision and ability to advance the region, then it is time to apply the selection process through the exposure of the program or vision if selected. The government's desire to realize the elections democratically, we can know from the consensus of the election law "that to ensure the election of governors, regents, and Mayors is carried out democratically as mandated in Article 18 paragraph (4) of the Constitution of the Republic of Indonesia in 1945, the sovereignty of the people and democracy of the people, by the people, and for the people must be respected as the main condition for the election of governors,regents, and mayors". The sovereignty of the people and democracy in its implementation should be emphasized by the implementation of the election of governors, regents, and mayors directly by the people, while still making some fundamental improvements to the various problems of direct elections that have been carried out.

In order to ensure that the election of governors, regents, and Mayors is carried out democratically as mandated in Article 18 paragraph (4) of the Constitution of the Republic of Indonesia in 1945,the sovereignty of the people and democracy of the people, by the people, and for the people must be respected as the main condition for the election of governors, regents, and mayors."Regional election as one of the real forms of manifestation of democracy in local

government, should increasingly reflect the process of democratic maturity". But if you look at the perspective of various problems as has been revealed above that the elections in Indonesia is a democratic activity with a very expensive value and this is certainly when looking at the dynamics that develop with a series of problems, ranging from post-election conflict, the highest order of corruption, addressing the high costs incurred by the government, which of course comes from the people is not proportional to the benefits obtained." This argument. not really, as stated above. there are indeed some very competent regional heads. The lion's share of these areas are not able to prosper its people. On the contrary, we see for ourselves in various media, both electronic and printed, how many and shameful the behavior of regional heads in KKN and in the field of demoralization. The spirit of heroism is not only needed to expel foreign invaders from this earth, but the spirit of heroism is still needed after independence, among other things, in maintaining the upholding of the values of Pancasila and the 1945 Constitution. From what is developing and the direction of the objectives of regional elections, legislative elections and presidential elections as the main framework in the frame of democracy is a real manifestation of procedural democracy, although democracy is not the same as elections, but elections are one of the aspects of democracy that is very important that must also be held democratically. Therefore, it is common in countries that call themselves democracies to traditize elections to elect public officials in the legislative and executive fields both at the central and regional levels.

Democracy is concerned with the wishes, opinions and views of the people, the pattern of democratic government is chosen by agreement by consensus. So that a strong democracy is a democracy that comes from the conscience of the people to achieve justice and welfare of the people. Suharyono divided 3 (three) basic standards or benchmarks of democracy transparently include (1) universal suffrage, is the right of every citizen to vote, thus democracy contains the right for all citizens, both men and women, regardless of race, religion or class to vote (universal), the limit only applies to people who are not adults and citizens who are stated to have mental disorders and the like. (2) representative government is an option and characteristic for modern countries, universal suffrage is expressed by choosing representatives of the people who are then burdened with the responsibility to make, manage and supervise public policies (3) in actuality, it requires a competition through voting in elections to choose representatives of the people, the representatives who will be elected by the people are structured by a system of political parties that number more than one party. When there is only one political party that exists in one country, such as a communist country, democracy becomes a dream of the people will be realized.

Muchlis Hamdi , said that democracy at least points to at least four important notions, namely: First, the degree of power and influence on making important decisions for the community is spread throughout the community. Second, democracy is a set of formal institutions such as free and general elections and majority voting in Parliament. Third, democracy always means a form of participation in the political life of a society. Fourth, democracy is defined simply as a form of government. While Jimly Asshidiqie said " " representative democracy is held to

determine the direction of the state and the direction of government policy, and direct democracy is held to determine the government leaders who will implement government policies and lead the implementation of the state's direction. The system of leadership is developed from the people, by the people, for the people, and even with the people".

Based on this understanding of democracy, no one group has the right to rule others except based on the consent of the people. A Democratic state system can only be enforced on mental infrastructure, or a way of life that embraces the values of democracy itself. Democracy cannot be established by dictatorial means with dictatorial tools. Democracy when viewed from the way of channeling the will of the people, can be distinguished above.

1. Direct democracy. Historically practiced in city states (polis, city state) in Ancient Greece. At that time, the whole people could convey their aspirations and views directly. Thus, the government can know directly also, the aspirations and the real problems faced by the community. But in modern times, direct democracy is difficult to implement because: i) it is difficult to find a place that can accommodate all the people at once in discussing state and national affairs; ii) not everyone understands the increasingly complicated and complex problems of the state; iii) deliberation will not be effective, making it difficult to make good decisions. Direct democracy occurs when the people realize their sovereignty in a country is done directly, meaning that the right of the people to make political decisions is carried out directly by all citizens who act according to majority procedures.
2. Indirect democracy or representative democracy. A democratic system that replaces direct democracy in which the Will is channeled, the people elect their representatives to sit on the board of Representatives, the aspirations of the people are conveyed through their representatives. Types of representative democracy vary according to the Constitution of each country. Indirect democracy occurs when to realize the sovereignty of the people is not directly dealing with the executive, but through representative institutions. In indirect democracy, parliamentary institutions are required to be sensitive to various matters related to public life in relation to the government or state. Indirect democracy is also called representative democracy.

The implementation of democracy in Indonesia through the general election of regional heads both at the provincial and district/city levels, when viewed from the number of simultaneous elections after 2015 and 2017, the third wave was held on June 27, 2018 in 171 regions consisting of 17 provinces, 115 districts, and 39 cities. Direct democracy in today's era is impossible to implement in a real sense, because it is not only unrealizable, but also ethically unnecessary. But what must be fought for is that the state administration remains under the effective supervision of citizens. The people participate in policy making and also elect the leadership of the organs through their elected representatives. Jimly Asshiddiqie put forward the notion of democracy as follows" " democracy is first of all an idea that presupposes that power is from, by and for the people. In a more participatory sense democracy is even referred to as the concept of power from, by, for, and with the people. This means that the power is basically recognized as coming from the people, and therefore the people are the ones who actually determine and give direction and who actually organize State Life. The entire system of

maintenance of the country was essentially provided for the people themselves. Even a good country is also idealized to be held together with the people in the sense of involving the community in the broadest sense”.

When observed the definition of democracy presented by Jimly Asshiddiqie, democracy is conceptualized as from, by, for and with the people. And therefore Jimly Asshiddiqie further revealed four characteristics that are covered in the definition of popular sovereignty, namely: (1) the supreme power is in the hands of the people; (2) held for the people; (3) by the people themselves, and (4) by continuing to open up by involving as wide as possible the people's participation in state administration. While RR.Cahyowati, put forward the concept of democracy, “although literally, the word democracy is a system of government in a country where all citizens equally have the rights, obligations, positions and powers, both in running their lives, as well as in running the state or supervising the course of state power, either directly, for example through public spaces, as well as its representatives who have been, so that the system of government in the country comes from the people, for the benefit of the people”.¹³

Democracy according to its level which is seen from the aspect of making and implementing political decisions, according to Abdul Mukti Fadjar, is divided into four levels which include:

1. Procedural democracy-relying on fair competition and citizen participation to determine people's representatives or government leaders through direct, General, free, secret, honest, fair, and accountable elections, also called minimalist democracy.
2. Aggregative democracy-it is democracy, where not only participation in elections is widespread, juridical, and accountable, but especially the ideals, opinions, preferences, and judgments of citizens that determine the content of laws, policies, and other public actions, because it believes in the principle of self-government that underlies decision- making on laws and public policies by most citizens.
3. Deliberative democracy - that laws and public policies should be formulated based on reasons and considerations that are rationally acceptable to all citizens, as it emphasizes the importance of individual autonomy, equality and equity.
4. Participatory democracy-recognizes the importance of democratic values such as self-government, political equality, and reasoned rule, but also emphasizes the participation of all citizens who have the right to vote, directly involved in decision-making. Democracy is a stage or a process that must be passed by a country to get welfare. democracy for a country is a lesson towards the development of a perfect state. Therefore, the measure of the existence or not of a democracy in a country is not determined by the ultimate goal, but rather looks at the fact of the existing stages. Democracy will run in accordance with the Times and will be greatly influenced by the cultural factors of a country”.
5. Pancasila Democracy, The Constitution of the Republic of Indonesia in 1945 is a Constitution with the spirit of Pancasila. Pancasila is the soul or spirit, while the 1945 Constitution is the form or body. Therefore, how to read the 1945 Constitution, should not

¹³ Fradhana Putra Disantara, “Perspektif Keadilan Bermartabat Dalam Paradoks Etika Dan Hukum,” *Jurnal Litigasi* 22, no. 2 (2021): 205–29.

only be fixated on the texts written in ways only grammatical, but also by diving into the values that live in the ocean of ideas contained in it” democracy that officially crystallized in the 1945 Constitution and which is currently in force in Indonesia is commonly called “Pancasila democracy”.

Agustam, mengintisasikan some basic notions of pancasila democracy; (1) Pancasila democracy is a democracy based on kinship and mutual assistance aimed at the welfare of the people, which contains elements of religious consciousness, based on truth, love and noble character, Indonesian personality and sustainable. (2) in Pancasila democracy, the system of organizing the state is carried out by the people themselves or with the consent of the people. (3) in Pancasila democracy, individual freedom is not absolute, but must be aligned with social responsibility. (4) in Pancasila democracy, the universality of democratic ideals is combined with the ideals of Indonesian life that are imbued with the spirit of kinship, so that there is no domination of the majority or minority Although in fact the constitutional foundations for democracy in Indonesia as it applies today already exist and apply long before 1965, but the term “Pancasila democracy” was only popularized after the birth of the new order (1966) which is anti-feudalism and anti-imperialism, with the aim of forming a socialist society. The foundation of democracy is justice, in the sense of opening up opportunities to everyone, and it also means autonomy or independence from the person in question to organize his life, according to what he wants. The issue of justice is important, in the sense that everyone has the right to determine their own way of life, but this right must be respected and given opportunities and help to achieve it. With the provisions as formulated in Article 1 Paragraph (2) of the 1945 Constitution, it is necessary to conduct an assessment of the implementation of popular sovereignty according to the Constitution, because the 1945 Constitution is a positive law and is the highest law containing state regulatory norms .

In the draft of tap MPR RI on Pancasila democracy, it is stated that Pancasila democracy is a norm that regulates the implementation of popular sovereignty and the implementation of state government, in political, economic, social and cultural life, and security defense, for every citizen of the Republic of Indonesia, socio-political power organizations, community organizations, and other social institutions and state institutions both in the center and in the regions .From the basis of diats, a common thread can be drawn that pancasila democracy is a democratic understanding that is based on the personality and philosophy of life of the Indonesian nation whose embodiment is as in the provisions as in the preamble to the 1945 Constitution. Therefore, the definition of pancasila democracy is not only a political democracy but also an economic and Social Democracy (see amendment to the 1945 Constitution and its completion in Article 27,28.29,30,31, 32, 33. and 34).“The Constitution of the Republic of Indonesia in 1945 is a Constitution with the spirit of Pancasila. Pancasila is the soul or spirit, while the 1945 Constitution is the form or body. Therefore, how to read the 1945 Constitution, should not only be fixated on texts written in ways that are only grammatical, but also by diving into the values that live in the ocean of ideas contained in it”.

In summary, Pancasila democracy has several meanings as follows: (a). Pancasila democracy is a democracy based on kinship and mutual assistance aimed at the welfare of the people, which contains elements of religious consciousness, based on truth, love and noble character,

Indonesian personality and sustainable.(B) in Pancasila democracy, the system of organizing the state is carried out by the people themselves or with the consent of the people. (C) in a Pancasila democracy, individual freedom is not absolute, but must be aligned with social responsibility. (d). In Pancasila democracy, the universality of democratic ideals is combined with the ideals of Indonesian life that are imbued with the spirit of kinship, so that there is no domination of the majority or minority.¹⁴

In its position as the basis and ideology of the state that is not questioned anymore even very strong, then Pancasila must be used as a paradigm (frame of mind, source of value, and orientation) in the development of law, including all efforts to reform it. On Pancasila and the 1945 Constitution, Buya Hamka said, Forgive me if we the Ulema Council do not propagandize Pancasila in every conversation, lecture, speech, and tabliq-tabliq. Because we feel that what is needed now, is proof of who really live and implement Pancasila in the practice of everyday life . Pancasila as the basis of the state does have a juridical connotation in the sense of giving birth to various laws and regulations that are hierarchically arranged and derived from it;¹⁵ while Pancasila as an ideology can be connoted as a social program where law is one of the tools and therefore must also be derived from it.¹⁶ Various Democratic criteria were created to describe how democracy is carried out in various countries with different shades and colors in accordance with the philosophy of each country. Pancasila democracy is an idea or ideas that want to be implemented by the founders of the country since the beginning of the Unitary State of the Republic of Indonesia. Pancasila democracy which is based on deliberation to reach a consensus with kinship and cooperation has a distinctive feature that distinguishes it from other democracies, from which it turns out that the term "Pancasila democracy" is just an abbreviation for the precept of "people led by wisdom in deliberation/ representation", namely the 4th precept in Pancasila".

From the results of the study conducted by Moch Nurhasim at least noted some of the negative impacts of the implementation of direct elections that lead to conflict in various forms, first the intervention of organizing institutions and other institutions such as the Supreme Court and the central government in determining the results of community choices. From the case studied the issue of the final result of the count is not believed to be an accurate result even though the thin difference is not a reason to contradict the election results where the winner is determined by the people who have sovereignty. Both the intervention and the completion of the election results directly justu create a form of uncertainty of an election this shows the unpreparedness of the candidates to comply with the rules of the game culture is not ready to lose to be one of the negative effects and the impact of the implementation of the election which is indeed from the beginning has saved a number of embryos to be opposed elites who are not

¹⁴ I Gede Agus Kurniawan, "Putusan Mahkamah Konstitusi Terhadap Undang-Undang Cipta Kerja Dalam Perspektif Filsafat Utilitarianisme," *JURNAL USM LAW REVIEW* 5, no. 1 (2022): 282–98, <https://doi.org/http://dx.doi.org/10.26623/julr.v5i1.4941>.

¹⁵ Ni Ketut Supasti Dharmawan et al., "Protecting Well-Known Marks Related to Territorial Principle: From Substantive Similarity to the Distinctiveness Theory," *Journal Equity of Law and Governance* 6, no. 2 (2024): 41–50, <https://doi.org/https://doi.org/10.55637/elg.6.2.10740.33-41>.

¹⁶ I Gede Agus Kurniawan, Putu Aras Samsithawrati, and Ni Ketut Supasti Dharmawan, "Legal Protection for Intellectual Property Holders in Business Activities in The Era of The Industrial Revolution 4.0," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 11, no. 1 (2024): 74–81, <https://doi.org/https://doi.org/10.24252/jurisprudentie.v11i1.48076>.

ready to lose using the masses as an instrument to influence changes in the results of the people's choices. This is certainly a negative effect of holding elections directly. Distortion in the elections as if it happened from stage to stage full of uncertainty. The three regional elections showed the face of democracy a joke of Local Democracy Why is it called a joke because it is similar to a slapstick and often the results of people's choices are twisted by the interests of election organizers and or higher institutions. The attitude of the masses is essentially one of the obstacles to local democracy. Democracy is actually aimed at developing a dialogue that essentially does not expect anarchic ways. In addition, democracy must also be placed on the trust of all parties over the rules of the game that have been determined.

After the Constitutional Court Decision No. 14/PUU-XI / 2013 which granted part of the application for judicial review of Law No. 42 of 2008 on presidential and vice presidential elections submitted by Effendi Gazali et al. Where in the decision of the Constitutional Court stated: Article 3 Paragraph (5), Article 12 paragraph (1) and Paragraph (2), Article 14 paragraph (2), and Article 112 of Law No. 42 of 2008 does not have binding legal force (unconstitutional). Of the series of provisions that are declared to have lost constitutional validity, the Constitutional Court emphasized that the general election of the president and vice president must be held simultaneously with the general election of members of the DPR, DPD, and DPRD. With this decision, the provision that the general election of the president and Vice President (Presidential Election) be held after the general election of members of the DPR, DPD, and DPRD (legislative election) is unconstitutional, in the second dictum of the amar the Constitutional Court decision confirms that the simultaneous election decision will be applied in the 2019 election. The decision of the Constitutional Court is the final decision, the interesting part of the amar of the Constitutional Court decision is that the implementation can only be carried out in the 2019 election considering the implementation of the 2014 election preparation at that time has begun to run. If the 2019 simultaneous elections can be held, it will be the history of Indonesia for the first time that elections will be held simultaneously. The draft of the 2019 election law has been passed by the DPR and the government, many people who feel dissatisfied with the contents of the law then submit a material test to the Constitutional Court. There are at least five crucial issues in the election law that are debated by the political elite at the plenary in the DPR, namely: presidential threshold, parliamentary threshold, allocation of DPR seats per constituency (dapil), legislative election vote conversion methods, and election systems.¹⁷

Various criticisms of the practice of democracy in Indonesia continue, among them related to the cost of our democracy is considered too expensive. While the product of democracy does not show a significant linkage. In other words, the implementation of our democracy is inefficient, where in a democracy there is a need to prioritize the public interest (the crowd) on the one hand and the interests of efficiency on the other. In a good democracy, the process of making decisions involves as many people as possible, and draws good thoughts from many of those views. For this reason, a good democratic framework is one that allows the connection of a wide range of information and sufficient data on the various desires and needs of citizens.

¹⁷ Moch Nurhasim, *Konflik Dalam Pilkada Langsung Studi Tentang Penyebab Dan Dampak Konflik*, Jurnal Penelitian Politik, Jakarta, Pusat Penelitian Politik, LIPI, p-ISSN 1829-8001, e-ISSN.2502-7476, 2016 hlm 111

The practice of democracy that is criticized is not just the length of the decision-making process due to too many political considerations, so that it experiences a democratic deficit, which is shown by the high cost of selecting public officials through elections, both legislative elections, presidential elections, and regional elections.

The contestants, both parties and candidates, must spend considerable money to finance contestation in the fight for public offices. There are at least two prominent factors that make candidates for public officials have to spend big. First, the design of the election of public officials today is indeed made like a market, even been capitalized. Consequently, candidates for public office must spend a lot of money to increase their vote. Second, with regard to our voting behavior that tends to be rational, this is certainly encouraging because that kind of behavior should be owned by people who choose democratic mechanisms. Unfortunately, the group of rational voters must be divided into two more groups, namely program-rational voters and material-rational voters. Rational-program voters are voters who make choices based on policy considerations offered by candidates. Material-rational voters are voters who make choices based on short-term considerations, such as because of money or other forms of material exchange .

4. Conclusion

The conclusions of this study are as follows:

- a. The mechanism of filling the position of regional head in Indonesia in recorded history has been carried out or used by various systems since independence until now. First, the system of appointment or appointment by the center. This System has been used since the Dutch East Indies colonial government, the Japanese occupation, and after independence the government uses this system based on Law No. 1 of 1945, Law No. 22 of 1948, and Law No. 1 of 1957. Next in the era of the new order based on Undangg-Law No. 5 of 1974, the filling of the post of regional head is done by pseudo demookasi system, where the DPRD selects the regional head ccalon then the president sets one candidate from the election results by the DPRD without regard to the candidate's vote. In the early era of reform through Law No. 22 of 1999, in accordance with the provisions of Article 34 paragraph (1) the filling of the position of regional head and Deputy Regional Head was carried out by the DPRD through simultaneous elections. Paragraph (2) candidates for Regional Head and candidates for Deputy Regional Head, determined by the DPRD through the nomination and election stages. Meanwhile, Article 40 paragraph (3) the pair of candidates for Regional Head and candidates for Deputy Regional Head who received the most votes in the election, as referred to in Paragraph (2), shall be designated as regional head and Deputy Regional Head by the DPRD and approved by the President. Furthermore, Pilkda directly mandated by Law No. 32 of 2004, where the successful implementation of Pilkda is not only technically held, but goes hand in hand with the resulting figure of the regional head who has the capacity as a regional leader who is able to face the challenges and problems of the region and meet the expectations of the community.
- b. Various mechanisms of regional head elections that have been implemented in Indonesia

certainly have their advantages and disadvantages. However, considering and considering various aspects, sert refers to the provisions of Article 18 paragraph (4) of the 1945 Constitution, the regulation of regional head elections is the principle of open legal policy. Open legal policy is an open legal policy which is the authority of law-forming if the Constitution as the highest legal norm does not provide clear limits on how the material in the law should be regulated. Thus, law-forming institutions should also regulate the mechanism of indirect regional head elections through DPRD as an alternative in addition to direct elections. The selection of the election mechanism directly or indirectly submitted to each region. For example, regions that, among others, have a high level of public education and good financial resources can use direct election mechanisms, while other regions can choose indirect or representative mechanisms. The point is that both mechanisms are equally constitutional as long as they are carried out democratically according to the mandate of the 1945 Constitution. Filling the position of regional head in practice is also done through the election mechanism by the DPRD in terms of turnover between times or to fill vacancies for regional heads or deputy heads because they are unable to remain, are designated as suspects or resign. Even the filling of the acting regional head is determined by the central government which is of course far from the characteristics or democratic principles. Thus the election of regional heads will be very dynamic and flexible and will be very efficient, especially in terms of financing. This is in line with the Pancasila democracy that was built and developed in Indonesia which emphasizes freedom or equality, popular sovereignty, and open and responsible government. The most important aspect of Pancasila democracy is the sovereignty of the people. This principle emphasizes that political power is in the hands of the people and that government is exercised for the benefit and welfare of the people. The people have the right to participate in political decision-making through elections and other mechanisms of public participation.

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