

Idea Formats for Selection Regional Heads in The Future as

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Ideal Formats For Selection Of Regional Heads In The Future As A Democracy Settlement Requirement In Indonesia

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Abstract: This study aims to examine and analyze the ideal format of regional head elections in the Indonesian constitutional system in the future. The problem in this research is to examine how the ideal format of regional head elections in the Indonesian constitutional system in the future. This study uses a normative method with steps of description, systematization and explanation of the content of positive law by using the concept approach, the law approach and the historical approach with systematic synchronization analysis. The results showed that; The ideal format for the election of regional heads in the Indonesian constitutional system in the future is in accordance with the Constitution of the Republic of Indonesia, namely the 1945 Constitution that the form of state adopted by Indonesia is the Republic, as a consequence of a Republican state, sovereignty is in the hands of the people. The implication is that the filling of state political office such as the position of regional head is carried out directly by the people through a general election. To emphasize and maintain the consistency of the presidential government system, filling the position of regional head as leader of the regional government is done through direct elections, not by parliament (DPRD). Based on constitutional juridical argument, filling the regional head in the future should continue to maintain the formulation where the regional head is elected directly by the people through the election.

Keywords: Ideal Format of Regional Head Election, Form of Organizing Democracy.

I. INTRODUCTION

The current of globalization is so strong by bringing the ideals of liberalization, so that the form of democracy can be seen in the current regional head elections held directly by the people. Before the amendment to the 1945 Constitution the general election of the regional head was carried out by the Regional People's Representative Council (DPRD). But after the changes in the 1945 Constitution, began to appear clearly the democracy desired by the people of Indonesia. It can be seen from the increasingly free person to issue an opinion as in the implementation of regional elections directly by the people.

Amendments to the 1945 Constitution have brought about changes in the Indonesian constitutional system, especially at the regional level. One of the changes in state administration at the regional level is about filling the position of regional head. Article 18 paragraph (4) of the 1945 Constitution states that: "Governors, Regents and Mayors respectively as heads of These two interpretations can also be seen again during the formulation of Article 18 paragraph (4) of the 1945 amendment of the second year 2000. The formulator of Article 18 paragraph (4) shows the difference between the formulator of Article 18 paragraph (4) of the 1945 Constitution, but it appears that the constituents of amendments to the 1945 Constitution, especially Article 18 paragraph (4) agree that the election of the Governor, Regent and Mayor is conducted democratically.

The current of globalization which is so strong by bringing about the understanding of liberalization, has made the form of democracy visible in the implementation of the current regional head elections carried out directly by the people (Drafting Team of the Indonesian MPR Secretariat General, 2008: 82). Before the amendment to the 1945 Constitution the head of the region was elected by the DPRD, but after the amendment to the 1945 Constitution, it became clear that democracy was wanted by the people, namely the direct election of the regional head by the people. The reason is that direct regional head elections can improve the quality of national leadership because there are more opportunities for the emergence of national leaders who come from below or the regions, however the choice to directly elect regional heads does not guarantee that direct elections are the best for electing regional heads. also with the election of regional heads through the DPRD as was done so far during the reign of the New Order and at the beginning of the era of

reform, both of these systems have advantages and disadvantages.

On the other hand there are those who want an election through representation in which the regional head is elected by the DPRD, this is because in Pancasila democracy what stands out is the principle of deliberation and consensus, so that the regional head election does not need to be done directly, it is simply done through the DPRD. The long debate over the implementation of regional head elections whether directly elected by the people through more democratic elections or elected by more democratic members of the DPRD or whether the regional head was better appointed by the President both have weaknesses and advantages. This problem is then the writer tries to give thought about the most appropriate format for regional head elections in accordance with Indonesian democracy based on Pancasila and the 1945 Constitution by selecting the title; Ideal Formulation of Regional Head Election in the Indonesian State Administration System.

In organizing elections, it is necessary to have an oversight to ensure that the elections are really carried out based on the principles of elections and legislation. To oversee the implementation of general elections, especially regional head elections, regulated in Article 70 of Law Number 15 Year 2011 "Regency / City Panwaslu, District Panwaslu, Field Election Supervisors, and Overseas Election Supervisors are formed no later than 1 (one) month before the stages firstly, the holding of an election starts and ends no later than two months after all stages of the election have been completed. So it is clear that pure democratic elections are a form of people's collective statement of sovereignty and an irrevocable right of citizens, these rules are recognized in national constitutions everywhere in the world as well as in human rights instruments and international law.

II. RESEARCH METHODS

This research is a normative legal research by conducting a study of three layers of legal science, namely dogmatic law, legal theory and legal philosophy. (Bahder Johan Nasution, 2000: 16). The method used in this research is the conceptual approach, normative approach and historical approach. Legal material consists of primary legal material, secondary legal material and tertiary legal material. Primary legal material consists of legislation relating to the problem discussed, namely legal material that has binding power because it is issued by the government. Secondary legal material is material that provides an explanation of primary legal materials such as the Draft Law, the results of research, or the opinions of legal experts. Tertiary legal materials are materials that provide instructions and explanations for primary legal materials and secondary legal materials such as dictionaries (laws), encyclopedias and others. In analyzing legal materials, researchers do so by taking an inventory of all statutory regulations and legal materials relating to the holding of elections for regional heads and local government. The next step is to systematize all legislation and legal materials that have been inventoried to further interpret norms that have been systematized by axiomatic and hermeneutic thinking with the starting point of philosophical thinking.

III. LITERATURE REVIEW

3.1. Freedom of Choice Theory

Human freedom will face a limit, this then requires a person to make a choice. When humans choose or the fall of decisions arises human consciousness, because basically humans realize themselves autonomously from the first time he recognizes himself. He accepts himself and becomes himself with his uniqueness. He is autonomous and independent. Human freedom is an ability to give meaning and direction to life and his work, the ability to accept or reject the possibilities and values that are continually offered to him. The thing that needs to be understood is that there is an effect on human beings, which later affects human freedom which in the philosophical world is called autodeterminism, which is in determining choices, humans are determined by factors outside their own abilities, such as mixing social conditions, while on one side humans also autonomously also determine their actions. (Anton Bakker, 2000: 99).

John S. Mill groups freedom to; First; Freedom which encompasses the realm of inner power, that is, consciousness which demands freedom of conscience in the broadest sense, namely freedom in thinking and feeling, absolute freedom of opinion and sentiment for everything that is practical or speculative, which is scientific, moral or theological. Freedom to express and announce his opinion. Second is freedom associated with individual power. Third; is freedom that is related to other people. (John Stuart Mill, 1996: 202).

According to Jean Paul Sartre that human ties are freedom and human freedom is absolute, (Harun Haryono, S, 1980: 162). freedom is only owned by humans alone. (Dwi Siswanto, 2001: 58). It is said to be absolute because this is a condition for human development and self-development or is called human reality is free, basically and completely free. (Jean-Paul Sartre, Being and Nothingness, 1956: 11). While freedom appears in the fact that humans are not themselves, but are always in a situation of being themselves. Situations where humans are required not to stop at themselves but rather try to change themselves. This effort is accompanied by various decisions on choices that humans can choose themselves. In this endeavor humans act alone without others helping or being with them. He must make his choice for himself and for all humanity.

Humans are free to determine what is the essence of himself and this determination is done by making choices. However, the freedom

to make this choice is accompanied by a deep fear, because with that choice humans declare their responsibility not to themselves but also to others. The early man is aware that he exists, it means that man realizes that he is facing the future, and he is aware he is doing so. This emphasizes a responsibility on humans. (Ahmad Tafsir, 2001: 226-227). When man realizes he is dealing with something, realizes that he has chosen to be, at that time he is also responsible for deciding for himself and all people, and at that moment humans cannot escape from overall responsibility. In addition to self, humans are also required to be responsible for the natural taste. Man is fully responsible, even for nature, because his feelings are shaped by his own actions. In relation to each other as part of the reality of human existence that exists freely together, Jean Paul Sartre believes that one's freedom must also take into account the freedom of others as he said; I must not make my freedom a goal without simultaneously making the same thing with the freedom of others. So I am free, but in my freedom, I should also provide opportunities for others to express their freedom. (Van der Weij, P.A.,: 149-150). In the context of freedom of choice, giving meaning to life and the living world will become possible. In this context freedom of choice is absolute and is the essence of human life.

3.2. Political Position Theory

Political recruitment or political representation plays an important role in a country's political system. This is because this process determines who will carry out the functions of the country's political system through existing institutions. On the other hand, we can find a definition or understanding of political recruitment that pays more attention to its functional point of view, namely "The process by which citizens are selected for involvement in politics". The above understanding explains that political recruitment is a process that involves citizens in politics. Therefore, whether or not the objectives of a good political system are achieved depends on the quality of political recruitment. The presence of a political party can be seen from the ability of the party to carry out its function. One of the most important functions possessed by political parties is the function of political recruitment. As expressed by political expert Ramlan Surbakti, that political recruitment includes the selection, selection and appointment of a person or group of people to carry out a number of roles in the political system in general and the government in particular. For this reason, political parties have their own way of recruiting, especially in the implementation of the recruitment system and procedural system carried out by these political parties. Not only that the recruitment process is also a function of finding and inviting people who have the ability to take an active part in political activities, namely by going through various screening processes.

In the realm of democracy, Political Parties are one of the important institutional instruments of implementing a modern democratic political system. Modern democracy presupposes a system called representativeness, both representation in formal state institutions such as parliament (DPD / DPRD) and representation of people's aspirations in party institutions. This is different from direct democracy as practiced in Classical Greece, modern democracy as an indirect democracy requires the media to deliver political messages to the state (government). The media in the form of these institutions are what we usually call political parties and their existence must be regulated in the modern state constitution. Given the function of political parties that are so important, their existence and performance is often an absolute measure of how democracy develops in a country. Although it is not an implementation of a government, its existence will affect how and in what direction the implementation of government is carried out.

Cadre formation in any organization is the pulse for an organization. Cadre formation is the process of storing Human Resources (HR) so that later they become leaders who are able to build the roles and functions of the organization better. In cadre training, there are two important issues. First, how the efforts made by the organization to increase the ability of both skills and knowledge. Second, is the ability to provide a cadre stock or organizational HR, and is especially focused on young people. This is a form of political education, where so far the role has been ignored. But what happens a lot now is a haphazard selection process without certain methods carried out by political parties, it can be seen that the political parties do not strictly select who will be the people's representatives later. The leaders of major political parties in Indonesia often come not from their qualifications.

3.3. Social Conflict Theory

According to the law, conflict is defined as a struggle to obtain rare things such as values, status, power and so on where their conflicting objectives are not only to gain profits but also to subdue their competitors. Conflict can be interpreted as a conflict of power and interests between one group and another in the process of struggling for economic resources, political interests, social inequality and relatively limited cultural differences. (Robert Lawang, 1994: 53). From the various meanings above it can be concluded that conflict is disputes, disputes and conflicts that occur between members or the community with the aim of achieving something that is desired by challenging each other with the threat of violence. social conflict is a form of social interaction between one party and another party in the community which is characterized by mutual threatening, pressing, and mutually destructive attitudes. Social conflict is actually a process of meeting two or more parties that have the same relative importance to things that are limited. In its extreme form, the conflict takes place not only to maintain life and existence, but also aims to the degree of destruction of the existence of other people or groups that are seen as opponents or rivals.

In every social group there are always seeds of conflict between individuals and individuals, groups and groups, individuals or groups with the government. This contradiction is usually non-physical. But it can develop into a physical collision, violence and not in the form of violence. Many people argue that conflicts occur because of the struggle for something that is limited in number. There is also the opinion that the conflict arises because of the imbalances in society, especially between the upper classes and lower classes. In

addition, there are also differences in interests, needs, and goals of each community member.

3.4. Conceptual Framework

The ideal formulation of regional head elections for the future is in accordance with the Indonesian constitutional system which relies on the Pancasila and the 1945 Constitution. Individuals Towards Effective Local Government (Retno Saraswati, 2011). Likewise with research conducted by Suharizal (2014). with the title Implications of Direct Regional Head Election on the Growth of Democracy and the Way of Government in the Regions. In line with that, Tubagus Iman Ariyadi (2015) conducted a study entitled The Role of Kiai in the Election of the Governor of Banten Province.

From various previous studies, both research as described above and academic research published in various research journals, in general, highlight and partially examine regional head elections, such as the constitutional rights of individual candidates in regional head elections, regional head elections in directly as the implementation of popular democracy, and examine the role of informal figures such as kiai and jawara in local elections. While the research conducted is a research that has multiple legal predictions by holistically examining existing rules, to find a legal thinking about how the ideal formulation for the holding of local elections in the future in the Indonesian constitutional system.

3.4.1. Regional Head Election

The regional head election referred to in this study is the regional head election as referred to in Act Number 1 of 2015 concerning Determination of Government Regulation in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors Into Acts as contained in Article 1 number 1 that states; Election of Governors, Regents and Mayors, hereinafter referred to as Elections, shall mean the implementation of people's sovereignty in the Provinces and Regencies / Cities to elect Governors, Regents and Mayors directly and democratically.

The experience in Indonesia so far shows that there are at least five formulations for filling the position of regional head namely First, the regional head is elected indirectly, but only appointed or appointed by officials above him. Second, the Regional Head is indirectly elected as a level Article 4 of Law No. 5 of 1974 concerning Regional Government. Third; Regional heads are elected indirectly as stipulated in Article 34 of Law no. 22 of 1999 concerning Regional Government. Fourth; Regional heads are appointed by the DPRD. Fifth; Regional heads are elected directly by the voters through the elections as stipulated in Article 24 paragraph (5) and Article 56 of Law no. 32 of 2004 concerning Regional Government jo. UU no. 12 of 2008 concerning Amendment to Law No. 32 of 2004 in conjunction with Article 1 number 4 of Law No. 15 of 2011 concerning Election Organizers.

IV. RESULTS AND DISCUSSION

4.1. Observing the Implementation of Previous Elections, To Look For the Ideal Format of Regional Head Elections in the Future

Since independence on August 17, 1945, the 1945 Constitution provides a description that Indonesia is a democratic country. In its leadership mechanism, the President must be accountable to the MPR in which the MPR is a body elected from the people, so that in the hierarchy the people should be the holders of state leadership through the representative mechanism chosen in the election. This conception reflects the realization of people's sovereignty with a democratic system. According to Affan Gafar 2004: 10) in the history of Indonesian politics, there are four kinds of democracy that have ever prevailed in Indonesia, namely democratic government during the revolution of independence, representative democracy, guided democracy, and Pancasila democracy.

The state administrators at the beginning of the independence period had a very large commitment in realizing political democracy in Indonesia. Democracy of the government during the revolution of independence lasted quite a long time, namely from 1945 to 1949, there were some fundamental things which laid the basis for democracy in Indonesia during this period, namely the overall Political franchise. It means that the nation's formers had from the beginning had a very large commitment to democracy, so that when independence was taken, all citizens who were considered adults had the same political rights, without any discrimination originating from race, religion, ethnicity, and regionalism. . A president who is constitutionally elected and to avoid the possibility of becoming a dictator, limits his power by forming a Central Indonesian National Committee (KNIP) to replace parliament. While in the administration of democracy, with the Vice President's Decree Number X issued on September 3, 1945, it was possible to form or be given the freedom to establish a number of political parties. Thus theoretically the Information is considered to be the foundation for the party system in Indonesia, for the next period in the history of Indonesian politics with the implementation of liberal democracy. The development of democracy in Indonesia has gone through a long history, ideas and ways have been tried and put forward to meet the demands of democratization in Indonesia. Efforts to meet the demands of realizing democratic governance, for example, can be seen from the presence of the formulation of the Indonesian democratic model in two eras of government, namely the old order and the new order. In the era of the Soekarno government, it was known as the guided democracy model, then later in the Soeharto era the democratic model that was implemented was the Pancasila democracy model. However, let alone having a democratic government, the democratic model offered in the two Indonesian government regimes, instead gave rise to an authoritarian government, which

bound the political freedom of its citizens.

The rolling of the reform movement has given rise to several changes, including in the matter of organizing the 1999 elections. The multi-party system of the 1999 elections actually proved that the Indonesian people in previous periods had been shackled by their political aspirations, because in the course of the existing political parties they were incompatible with people's aspirations, the existing parties only maintain the status quo. The emergence of many political parties with diverse segments and ideologies proves that Indonesia is actually not politically blind even though the electoral system is still proportional without including the name of the candidate on the ballot, but the election during the reform period became a fair competition for election contestants.

The 1999 election was held by the KPU which consisted of 48 members from political party elements and 5 representatives of the government. In holding elections, the KPU is also assisted by the KPU General Secretariat. The central election organizer is carried out by PPI whose number and elements are the same as KPU. For regional level implementation, PPD I, PPD II, PPK, PPS, and KPPS are implemented. Overseas implementation is carried out by PPLN, PPSLN, and KPPSLN whose membership consists of representatives of political parties participating in the election plus several representatives from the government and community leaders.

The next election was held in 2004, this 2004 election had a very strategic meaning for the future of the Indonesian people because it was a test of momentum for the continuation of the reform and democratization agenda. If the multiparty system election in 1999 marked the transition to democracy, the 2004 election would be a momentum for the recovery of popular sovereignty. In contrast to the elections in 1999, the 2004 election in terms of institutional elections there was a change in which the composition of the KPU was no longer like the 1999 election. KPU based on Law No. 12/2003 no longer included representatives from political parties and the government, in addition, the KPU had enormous authority both the authority to prepare and carry out elections, including providing election logistics. The party system in the 2004 election offered many choices to the people and the people were quite critical in making their choices, even though the 2004 election was colored by various complexities, but in general the 2004 election system was better than the previous election. Voters can determine their own choices both party choice and the choice of their representatives, the electoral system by selecting parties, legislative candidates, candidates for President and Vice President can create a strong control of the people over their representatives in the legislative and executive institutions, so that later representatives are elected directly by the people will be able to carry out the functions of state government power.

The success of the general election in 2004 and the election of the President and Vice President which was the result of elections held directly by the community, is a manifestation of the success of the democratization process in Indonesia. The 2004 elections were very difficult and complicated, perhaps even the most difficult that could have been carried out in Indonesia without conflict or division, considering that Indonesia was still in a democratic transition. The 2004 election was a milestone in Indonesia's democratization which was then continued through subsequent elections with improvements that were deemed lacking. The 2009 general election as the third election after the reform became the hope of the Indonesian people to select truly qualified leaders by involving all the interests of the community, so it was natural that all parties hoped that the 2009 elections would be far more qualified and better than the previous elections. However, many parties consider that compared to the holding of the 1999 and 2004 elections, the 2009 elections actually declined in quality both in terms of the number of cases and the number of participation because the number of cases in the 2009 elections increased compared to 2004.

The 2009 election was the third election during the reform period which was held simultaneously on April 9, 2009 to elect 560 DPR Members, 132 DPD Members, and DPRD Members participated by 44 parties, 38 parties were national parties and 6 parties were Aceh local parties. The 2009 general election is the second general election that still applies direct elections to the President and Vice President. Qualitatively, the 2009 presidential election is indeed still a lot of weaknesses, shortcomings, and imperfections caused by various factors, including; First, the weakness lies in Law Number 42 of 2008 governing the Presidential Election. The law is considered to be too fast to accommodate the use of the Population Registration Number (NIK) as one of the requirements for the preparation of the voter list, while the population administration is still not orderly.

The second weakness is that the KPU as the organizer of the presidential election is too easily influenced by public pressure, including by election participants, so that it seems to be incompatible and less professional as well as lacking in maintaining its image of independence and neutrality. The third weakness, comes from the legal awareness of citizens to use their voting rights, including managing registered and whether they are voters, so that the number of citizens who have the right to vote and even registered in the voter list, but not using their voting rights is still quite a lot. Then the last weakness, the culture of being ready to win and ready to lose in an elegant election has not been internalized by election participants and their supporters.

4.2. Direct Election Is an Ideal Format of Organizing Regional Head Elections in the Future.

In the reform era of the 1945 Constitution amendments have been carried out in which elections have been instituted for members of representative institutions and government leaders, dispute resolution of election results, and election organizing agencies. But in the beginning the elaboration of the regulation left new problems in the field of constitutional matters, namely regarding the arrangements for electing members of the DPR, DPD, President and Vice President, and DPRD who were elected through elections in accordance

with Article 22E paragraph (2), while for the election of the Governor, Regent, and the Mayor (Regional Head) is democratically elected according to Article 18 paragraph (4). Why are there two terms "elected through elections" and "democratically elected". Are democratic regional head elections a part of the general election?

The problems faced now with the General Election are various kinds regarding inefficiency, budget waste and horizontal conflicts. The discussion discourse started from being re-elected by the DPRD to the governor while the regent / mayor remained through the election. The use of the term "democratically elected" gives rise to multiple interpretations. In the science of law and the science of State Law there is a so-called legal interpretation if the text of a regulation raises multiple interpretations, then legal interpretation can be made, including grammatical, systemic, and historical. (Jimly Asshiddiqie, 2006: 273-313). When viewed from the grammatical side, the term democratic confuses what mechanism is applied. Democracy is only a process, but who chooses this becomes a problem. Systemic is to interpret with the logic of construction such as the principles and consistency with other arrangements.

From this systemic point of view, in the same article and amendment of the same year why the DPRD was formulated was elected through general elections while regional heads were democratically elected. Whereas in the next amendment the President is directly elected. In the election institutionalization system there should be election consistency. Therefore, from a systemic point of view the regional head should be interpreted as being chosen through direct elections. At that time it was not immediately formulated to be elected through direct elections because they did not yet know whether the president would be directly elected, and also gave flexibility because there were regional heads who were not elected based on the special law, namely Yogyakarta. From a historical perspective, that is to see from the history of the formulation or formation of the provisions. From the minutes of the session, we can know the purpose of democratic formulation. (Drafting Team for Comprehensive Manuscript Process and Results of Amendments to the 1945 Constitution, 2010). By doing a historical review of the amendments to the 1945 Constitution it can be seen that the first time the Regional Head was democratically elected was delivered by FPDIP at the PAH I BP MPR session which discussed the formulation of Chapter VI on May 29, 2000. In this FPDIP stated that the government had not yet implemented the Article 18 of the 1945 Constitution as it should. Government is carried out centrally with pressure and coercion. Regional Head Elections at all levels are carried out with full engineering and only prioritize formal figures and ignore informal figures. To prevent the repression of coercion and coercion practices, FPDIP proposes to be explicitly stated with the formula: "Autonomous Regions have democratically elected Heads of Regional Governments whose implementation is regulated by law". (Drafting Team for Comprehensive Manuscript Process and Results of Amendments to the 1945 Constitution, 2010). It is clear that what was meant democratically according to the FPDIP at the PAH I BP MPR session above was to end the practice of regional head elections which had been carried out through engineering and the practice of government pressure and coercion on democratic mechanisms to elect the current regional heads.

On the other hand regional government arrangements tend to make uniformity, whereas in the explanation of Article 18 of the 1945 Constitution founding fathers stated in the territory of Indonesia there are approximately 250 *zelfbesturende landschappen* and *volkgemeenschappen* such as villages in Java and Bali, Nagari in Minangkabau, and so on. Therefore, the Daulat Ummah Party (FPDU) faction believes that Article 18 can no longer regulate the overall regional government let alone arrange regional and central relations. Furthermore, the FPDU proposes amendments to Article 18 which contains eight items, including the second item "Every autonomous region has a DPRD elected by the people in an election" and the fourth item "Each region has a regional government head or regional head directly elected by the people". Regional Heads elected directly by the people proposed by FPDU should be understood as FPDU formulates DPRD members who are also elected by the people through elections, thus regional heads elected by the people are elected through elections.

Referring to the historical interpretation of the *pilkada* in a democratic manner is nothing but directly elected. In the third amendment that formulated Article 22E it turned out that the election was explicitly intended to elect the President, DPR, DPD, and DPRD. The provisions of Article 18 (4) which formulate democratically elected are in fact left until the end of the fourth amendment. Thus, according to the 1945 Constitution the amendment results chosen democratically are interpreted directly chosen. (Ramlan Surbakti, Didik Supriyanto and Hasyim Asy'ari, 2011). However, based on sociological considerations, namely relying on the condition of society, political development, consideration of greater sociological interests can also be used as a legal interpretation. But this use has been separated from the systemic and historical formulation of the relevant provisions, because it only looks at the sociological development of society. (Ramlan Surbakti, Didik Supriyanto and Hasyim Asy'ari, 2011). Based on that the ideas of the regional head were returned to the DPRD chosen as a sociological interpretation, not a logic of legal consistency and not based on the historical purpose of formulating the provision.

Elections to elect regional heads directly are a means of building a basis of legitimacy for regional heads. Considering that DPRD members are elected directly by the voters through the election especially since the DPRD member election formula is now determined by the acquisition of the most votes, to balance the DPRD legitimacy basis, then the regional head's legitimacy basis should also be built through the election. The running of regional government required political stability. To maintain political stability this requires a balance of political power between the regional head and the DPRD. (Agussalim Andi Gadjong, 2007: 105). In the event that the regional head is elected by the DPRD, the consequence is that the DPRD will be given authority to hold accountable and dismiss the regional head before his term of office expires. Whereas as one of the characteristics of the presidential government

system is the existence of certain terms of office (five years) as stipulated in Article 7 and Article 22E paragraphs (1) and (2)], and if the regional head is elected and dismissed by the DPRD it is feared that it will fall into political instability and leads to the parliamentary system. Experience throughout the application of Law No. 22 of 1999 proves this. To avoid political conflict between the regional head and the DPRD which is prolonged, and to maintain the political stability of the regional government, the regional head should be directly elected.

In the case of filling the position of Governor as the head of a province carried out by the Provincial DPRD, in addition to having the potential to cause conflict, it will also cause a problem of the legitimacy of the Governor before the Regent / Mayor if the Regent / Mayor is elected directly through elections. In order to carry out the task of coordinating the Regent / Mayor, the Governor must have strong political legitimacy. In the event that the Governor is not directly elected by the voters through the election, and is not also elected by the DPRD, but is appointed / appointed by the President, then there is a constitutional problem. The problem is that the province is an autonomous region, not an administrative region, where the autonomous region has the authority to regulate itself, including in choosing regional heads, not appointed / appointed. If filling the position of Governor through being appointed / appointed, the constitutional problem must be addressed first, namely changing the status of the province no longer as an autonomous region. (HAW Widjaja, 2009: 221).

The idea of maintaining direct elections through elections is not free from criticism. There are three criticisms that are often raised, namely relating to the high cost of post-conflict local elections, the still rampant money politics and violent conflicts that characterize the post-conflict local election. Against the emergence of a number of these criticisms, the following answers can be given: (Ramlan Surbakti, 2013). First, it deals with expensive post-conflict local elections. Efficiency in financing the implementation of post-conflict local elections can be realized through simultaneous local elections. Election of members of the Provincial DPRD and Regency / City DPRD are held on the same day / date, time, and TPS as the elections of the regional head and deputy head of the provincial region and regional head and deputy head of the district / city area. This savings not only occurred in the honorarium of KPPS, PPS and PPK officers, but also in other expenditure sectors from three times to one local election. Local elections will simultaneously reduce the cost of the campaign because the campaign will be held by a coalition of two or three political parties for the election of members of the DPRD and the election of regional heads and deputy regional heads (provincial and district / city). The biggest campaign expenditure so far has not been to finance various forms of legal campaigning under the law, but to "rent a boat" to be nominated by a political party or a combination of political parties, and buy votes directly or through intermediaries. Second; relating to incumbents tend to use positions for personal campaigns. In the media coverage, it has been revealed that there are at least two modes used by the incumbent for the benefit of his personal campaign, namely social assistance funds and village development assistance. Regulations regarding this matter are not entirely located in the Election Law, but also in other laws and regulations. The assumption that should be held is not "humans are basically good" so it does not need to be regulated, but "whatever his background, humans can do good but can also do bad". Because it is needed arrangements to encourage good tendencies and prevent bad tendencies. The implementation of democracy must be guided by the law. Regulations regarding procedures for using social assistance and allocation of development budgets must be formulated in more detail so as to encourage incumbent's good behavior and prevent incumbent's bad behavior. Third: violence in some areas is not entirely related to post-conflict local elections. At least two things can be stated regarding the phenomenon of violence in several regions. First, the tensions caused by the disparity between communities are actually due to the lack of adequate channels from the various institutions that are supposed to play a role. Political parties that have seats in the DPR and DPRD as formal political representations (they are elected through elections to represent the citizens) are the ones who should accommodate and fight for the aspirations of these people. What is troubling is that political parties feel innocent every time there is political violence in the region. Second, elections are institutionalized conflicts. This means that the procedures and rules of competition between those who strive to obtain and those who strive to maintain seats / positions are regulated in a complete, clear, and consistent manner based on direct, general, free, confidential, honest and fair, transparent and accountable principles.

Elections governed by laws like this are called institutionalization of conflict. Institutionalization of conflicts like this is intended not only to get elected candidates, but also so that competition takes place peacefully without violence. One or more aspects of this institutionalization that may not have been effective in preventing violence. Filing a lawsuit against the results of the elections to the Constitutional Court should be seen as the willingness of the community to settle disputes over the results of civilized (legal), not with violence. Therefore, the number of claims against the election results cannot be interpreted as a weakness, but a positive phenomenon.

V. CONCLUSION

1. The Regional Head Electoral Institution as a sub-system of the government system has a very important position in maintaining the process of organizing the regional head elections by carrying out the implementation of regional head elections independently by using overflow and juridil principles. The position of the organizer of the regional head election in Indonesia was originally in the regional government regime which was named the Regional Election Commission (KPUD) which was responsible to the Regional House Representatives. The position of this institution then changed from what was originally in the regional government regime according to the provisions of Law Number 32 of 2004 and through Law Number 22 of 2007 entered into the electoral regime with national, permanent and independent positions.

2. The mechanism of organizing regional elections as a manifestation of the people's right to conduct democracy is a method or procedure that regulates and allows citizens to choose regional heads from and for themselves, meaning that those who elect or who wish to be elected are also part of an equal entity from the region concerned .. This mechanism is closely related to the rules and procedures of changing or transforming votes to political positions such as governors, regents and mayors. Election of regional heads is considered as the most real form of democracy and the most concrete form of participation (participation) of the people in the administration of government in their regions.
3. The ideal format for the election of regional heads in the Indonesian constitutional system in the future in accordance with the constitution of the Republic of Indonesia 1945 Constitution determines that the form of the State adopted by Indonesia is the Republic, as a consequence of a Republican state, sovereignty is in the hands of the people. The implication is that the filling of state political office such as the position of regional head is carried out directly by the people through a general election. Even though Article 18 Paragraph (4) of the 1945 Constitution stipulates that Governors, Regents and Mayors are elected democratically, using the hermeneutic interpretation of the word "democratic" here must be interpreted that regional heads are elected directly by the people. So as a consequence of the form of a Republican state, sovereignty is in the hands of the people, the people are entitled to determine their regional head. On the other hand the Indonesian constitution of the 1945 Constitution adheres to the presidential government system. One of the characteristics of a presidential government system is that the President as the executive leader is directly elected by the people, this is what distinguishes it from the parliamentary system where the executive leadership is elected by parliament based on the acquisition of a majority of seats in parliament. To emphasize and maintain the consistency of the presidential government system, filling the position of regional head as leader of the regional government is done through direct elections, not by parliament (DPRD). Based on the constitutional juridical argument, filling the regional head in the future should continue to maintain the formulation where the regional head is elected directly by the people through the election

VI. REFERENCES

- [1] Affan Gaffar, "Politik Indonesia Transisi Menuju Demokrasi", Cetakan IV, Pustaka Pelajar, Yogyakarta. 2004.
- [2] Ahmad Tafsir, "Filsafat Umum: Akal dan Hati Sejak Thales sampai Capra", Penerbit PT. Remaja Rosdakarya, Bandung, 2001.
- [3] Anton Bakker, "Antropologi Metafisik", Kanisius, Yogyakarta, 2000.
- [4] Bahder Johan Nasution, "Metode Penelitian Ilmu Hukum", CV. Mandar Maju, Bandung. 2008.
- [5] Dwi Siswanto, "Humanisme Eksistensial Jean-Paul Sartre", cetakan pertama, Philosophy Press, Yogyakarta, 2001.
- [6] John Stuart Mill, "On Liberty Perihal Kebebasan", Yayasan Obor Indonesia, Jakarta, 1996.
- [7] Harun Hadiwijono, "Sari Sejarah Filsafat Barat 2", Kanisius, Yogyakarta, 1980.
- [8] HAW Widjaja, "Otonomi Daerah dan Daerah Otonom", Rajawali Perss, Jakarta. 2009.
- [9] _____ "Otonomi Desa, Merupakan Otonomi yang Asli, Bulat dan Utuh", PT RajaGrafindo Persada, Jakarta. 2010.
- [10] Jean-Paul Sartre, "Being and Nothingness", trans. by Hazel E. Barnes, New York: Philocopical Library, 1956.
- [11] Jimly Asshiddiqie, "Pengantar Ilmu Hukum Tata Negara". PT Raja Grafindo Persada, Jakarta. 2009.
- [12] _____, "Pokok-Pokok Hukum Tata Negara Indonesia Pasca reformasi". PT Bhuana Ilmu Populer, Jakarta. 2008.
- [13] Ramlan Surbakti, "Memahami Ilmu Politik", Grasindo, Jakarta. 2010.
- [14] Retno Saraswati, "Rekonseptualisasi Hak Konstitusional Calon Perseorangan Menuju Pemerintahan Daerah Yang Efektif", Disertasi Program Doktor Ilmu Hukum, Universitas Diponegoro, Semarang, 2011.
- [15] Robert lawang, "Pengantar Sosiologi", Universitas terbuka, Jakarta, 1994.
- [16] Suharizal, "Implikasi Pemilihan Kepala Daerah Langsung Terhadap Pertumbuhan Demokrasi dan Jalannya Pemerintahan di Daerah". Disertasi Program Doktor Fakultas Hukum Univeritas Padjajaran, Bandung, 2014
- [17] Tubagus Iman Ariyadi, "Peran Kiai Dalam Pemilihan Gubernur Provinsi Banten", Disertasi Program Doktor Fakultas Ilmu Sosial dan Ilmu Politik Universitas Indonesia (FISIP-UI), Depok, 2015
- [18] Van der Weij, P.A. , "Filsuf-Filsuf Besar Tentag Manusia", Kanisius Joyakarta, 2001.

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