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## Rise and Fall of Democracy in Regional Government: From Assignment to Election

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### Abstract

Indonesia has been trying to develop democracy since the early independence. Assignment of the head of the region conducted from 1945 to 1999. After the big reformation in 1999, which started in 2004, Indonesia started a new chapter with the direct election model for regional heads. This research tries to find the philosophy of Indonesia's choice to select its regional leader according to the law provided. The research is normative research with a conceptual and comparative approach. The results show that the election of regional leaders in Indonesia has not always been in line with the sovereignty of the people and the concept of democracy. Political choice has had a very significant impact. However, as it turns out into practice, as an emerging country in South East Asia, even though an assignment and not by the general election, leaders or regional heads are also considered as democratic as long as it is still on the path of openness, fair game and also according to people's approval, including if it comes from the regional representative's choice of candidates.

**Keywords:** Election; Sovereignty; Democracy; Regional Leaders.

### Introduction

Regional heads in Indonesia are positions that have experienced changes in the way they are determined since the beginning of independence. Throughout early independence regional heads in Indonesia were appointed by the central government in accordance with the guided democracy implemented by President Sukarno. In the course of constitutional development, people's sovereignty has been the subject of discussions when we discuss of modern state.<sup>1</sup> Popular sovereignty is the life blood

<sup>1</sup> Mohammad Hidayatullah, Bonaventura Ngarawula, and Kridawati Sadhana, 'Political Investors: Political Elite Oligarchy and Mastery of Regional Resources in Indonesia' (2022) 7 Asian Journal of Comparative Politics.[269-281]. <<https://doi.org/10.1177/2057891120917213>>.

of every modern state and is the ammunition to strengthen democracy. Democracy itself, comes from the word's *demos* and *kratos*, which mean the people rule or government by the people. UNESCO also concluded that the idea of democracy is considered ambiguous or has several meanings regarding the institutions or methods used to implement the idea regarding cultural and historical conditions that influences the terms ideas and practices of democracy.<sup>2</sup>

Tomassoli,<sup>3</sup> also describe that if considered not solely an instrument of the government but as a rule to which the entire society, including the government, is bound, the rule of law is fundamental in advancing democracy. Koffi Annan<sup>4</sup> also describe that the Rule of Law is a millennia old principal referring to the way by which states are governed. As compared with Rule by Law, where the government uses the law to govern and is considered to be above the law, Rule of Law means that all entities, including the government, must adhere to the supremacy of the law. The Rule of Law is a nearly a universal value, and the United Nations General Assembly regularly identifies "human rights, the rule of law and democracy" as universal and indivisible values of the United Nations. The Rule of Law plays a key role in promoting peaceful, just, and inclusive societies and ensuring sustainable development.

There is more than just one method to fill the positions as regional leaders in Indonesia, and each have their own legal bases.<sup>5</sup> The dynamics and diversity of the Regional Head Election models indicate the dynamism of the government's thinking in explaining the model of filling regional head positions, marked by the emergence of regulations before the amendment of the 1945 Constitution, as well as

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<sup>2</sup> Miikka Pyykkönen, 'UNESCO and Cultural Diversity: Democratisation, Commodification or Governmentalisation of Culture?' (2012) 18 International journal of cultural policy.[ 545-562]. <<https://doi.org/10.1080/10286632.2012.718914>>.

<sup>3</sup> Massimo Tommasoli, 'Rule of Law and Democracy: Addressing the Gap between Policies and Practices' (2012) 49 UN Chronicle.[29-31] <<https://doi.org/10.18356/e2c335d7-en>>.

<sup>4</sup> The Office of the High Commissioner for Human Rights, 'About Democracy and Human Rights' ([ohchr.org](http://ohchr.org), 2022) <<https://www.ohchr.org/en/about-democracy-and-human-rights>> accessed 16 May 2024.

<sup>5</sup> Ryan Afif Dwinanda, 'Analisis Keragaman Model Pengisian Jabatan Kepala Daerah di Indonesia' (2017) 6 Diponegoro Law Journal.[1-23].<<https://doi.org/10.14710/dlj.2017.17400>>.

the interpretation of the meaning of “democratic” in Article 18 paragraph (4) of the Constitution of the Republic of Indonesia which gave birth to legislation related to Regional Head Elections post-reform, along with the formation of special laws that further regulate Regional Head Elections in a specific region in Indonesia.

In line with the development of Indonesian statehood, during the Suharto’s administration, the method for determining regional heads whether regents, mayor, governors was implemented differently. In the filling of regional leadership positions in Indonesia, there have been several models of regional leader selection along with the changes or revisions of laws and regulations concerning regional governance.<sup>6</sup>

The direct election of regional leaders in Indonesia has been held since the enactment of Law No. 32 of 2004 concerning Regional Governance. Before the implementation of this regulation, the selection of regional leaders was conducted through appointment by the central government under Law No. 5 of 1974, and later through the Regional People’s Representative Council (DPRD) under Law No. 22 of 1999. Hutapea mentions that the election of regional leaders in Indonesia has been a dynamic process since the Dutch East Indies era.<sup>7</sup>

With the emergence of reform in 1998, Indonesia began moving towards democratization by striving for more democratic regional leadership elections. This started with the determination that regional leaders would no longer be appointed by the central government as practiced during the New Order government, but rather elected by the Regional Representative Council (DPRD) resulting from direct and multi-party general elections in each region.

The subsequent era of regional leadership elections involves the implementation of simultaneous regional elections). Simultaneous regional elections are an effort to create local accountability, political equity, and local responsiveness. Consequently,

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<sup>6</sup> Joseph Chinyong Liow, ‘Can Indonesia Fulfill Its Aspirations to Regional Leadership?’ [2018] *International Relations and Asia’s Southern Tier: ASEAN, Australia, and India*, [175-187]. <[http://dx.doi.org/10.1007/978-981-10-3171-7\\_12](http://dx.doi.org/10.1007/978-981-10-3171-7_12)>.

<sup>7</sup> Bungasan Hutapea, ‘Dinamika Hukum Pemilihan Kepala Daerah Di Indonesia Nasional’ (2015) 4 *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*. [1-20]. <<http://dx.doi.org/10.33331/rechtsvinding.v4i1.136>>.

democratization at the local level is closely related to the level of participation and power relations built on the principle of popular sovereignty. Moreover, the results of regional elections should lead society towards better social, political, and economic conditions. A good regional election will give rise to good governance. Regional elections that are conducted more professionally and democratically will have a tangible impact on political change.<sup>8</sup>

The plan to conduct simultaneous regional elections is taken as a political reform effort to address the demands for efficiency and effectiveness in election administration. It is expected that eventually there will only be two forms of elections in Indonesia: National Elections for the legislative and presidential/vice-presidential levels, and local elections to elect Governors/Vice Governors, Regents/Vice Regents, and Mayors/Vice Mayors, which will be held simultaneously for efficiency. As it is known, the repeated elections in each region have been considered to significantly affect the finances of both the state and the regions, as well as due to the proliferation of election disputes and regional elections that ultimately end up in the Constitutional Court. Direct regional elections, which drain the energy, thoughts, and finances of the people that must be allocated for the conduct of very large-scale regional elections, immediately drain budget allocations that could have been allocated for more pressing public needs, such as poverty, health, unemployment, and education issues.<sup>9</sup> This poses a dilemma for the enforcement of democracy, where direct regional elections represent an improvement in democracy, but on the other hand, they sacrifice the welfare of the community.

To support the implementation of simultaneous elections, Law No. 10 of 2016 was issued, which then became the legal basis for it. Simultaneous elections subsequently created a situation where some regional officials had to complete their

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<sup>8</sup> Achmad Arifulloh, 'Pelaksanaan Pilkada Serentak Yang Demokratis, Damai Dan Bermartabat' (2015) 3 Jurnal Pembaharuan Hukum.[301-311]. <<https://jurnal.unissula.ac.id/index.php/PH/article/download/1376/1060>>.

<sup>9</sup> Ahsan Yunus, 'Multilayered Democracy in Papua: A Comparison of "Noken" System and Electoral College System in the United States' (2020) 6 Hasanuddin Law Review.[232-239].<<https://orcid.org/0000-0003-2617-1409>>.

terms earlier than the full 5 years, while others created vacancies because their terms had ended while the next regional elections were still far off. This situation then required the government to appoint an interim official to fill the position of regional head until the simultaneous elections were held.

The appointment of interim officials to fill the positions of regional heads in several areas has sparked considerable controversy among the public. There have been cases where candidates faced rejection from residents, or where officials appointed by the central government were active members of the police force, among other constraints. The interim officials filling the positions of regional heads, whether as governors or regents, are government employees holding positions in the Ministry of Home Affairs or elsewhere, even though there have been proposals originating from local resources themselves.

It is noted that in Morotai Regency, North Maluku, the Governor refused to inaugurate an interim regent who was not proposed by the local area.<sup>10</sup> In Central Kalimantan, the inauguration of interim regents in Barito Selatan and Kotawaringin Barat was also rejected by the people of Central Kalimantan. In West Java, the appointment of active police officers also faced opposition from various parties.<sup>11</sup>

South Korea has held simultaneous regional head elections since 1995. Previously regional head elections were not held because regional heads were determined by the central government in a centralized manner. Regional Head Elections in South Korea are known as local elections which involve the election of governors, mayors and other local regional heads.

The democratic transition was implemented with the aim that regional elections in South Korea are not only important for local government, but are also often considered an indicator of national political strength. The results of regional

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<sup>10</sup> Fransiskus Pati Herin, 'Daerah Tolak Lantik Penjabat Bupati Di Luar Usulan' *Kompas* (2022) <<https://www.kompas.id/baca/nusantara/2022/05/20/daerah-tolak-lantik-penjabat-bupati-di-luar-usulan>>.

<sup>11</sup> Juli Hantoro, 'Kontroversi M. Iriawan Jadi Penjabat Gubernur Jawa Barat' *Tempo* (19 June 2018) <<https://fokus.tempo.co/read/1098950/kontroversi-m-iriawan-jadi-penjabat-gubernur-jawa-barat>>.

elections can influence the map of national political power and provide an idea of the popularity of major political parties at the local level.

Local head elections in South Korea are important because they allow politicians to develop close relationships with their constituents, leading to potential electoral advantages in future elections.<sup>12</sup> Unlike national elections, where the centralized nature of politics can diminish the effectiveness of the politics, local elections provide politicians with the opportunity to directly plan and implement policies that have a visible impact on the daily lives of their constituents.<sup>13</sup> This visibility strengthens their electoral appeal.

In Indonesia, The mechanism for appointing regional leaders to fill vacancies in regional leadership positions is considered a setback for democracy.<sup>14</sup> Even though it's only temporary, such actions are seen as stifling public participation in politics and undermining the dignity of democracy itself. Furthermore, despite being explicitly stated in various regulations that interim regional leaders appointed to fill vacant positions should come from candidates proposed by the Regional People's Representative Council (DPRD), there are still frequent appointments of interim regional leaders from the central government, even when there are candidates proposed by the DPRD. This act of appointing regional leaders from the central government is clearly a violation of regional autonomy and democratic principles. Taking note of this, the author will attempt to discuss the development of democracy in Indonesia regarding the appointment of interim regional leaders as a result of simultaneous regional elections.

This research is a normative study with a legislative approach (statute approach) used in implementing regional leadership elections. Furthermore, it employs a comparative approach to identify some differences and similarities in

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<sup>12</sup> Woo Chang Kang, Won-ho Park, and B.K. Song 'The Effect of Incumbency in National and Local Elections: Evidence from South Korea' (2018) 56 *Electoral Studies* .[ 47–60]. <<https://doi.org/10.1016/j.electstud.2018.09.005>. >.

<sup>13</sup> *ibid.*

<sup>14</sup> Ricky Santoso Muharam, 'Single Candidate: A Setback to Indonesian Democracy?' (51AD) 2023 *Technium Soc. Sci. J.*[261].

the implementation of regional leadership elections in Indonesia compared to other countries. The analysis will be conducted qualitatively in a descriptive form

The choice of Brazil and South Korea are based on thoughts that these two nations are the most similar with Indonesia in term of Presidential system of government and also in form of a unitary country.

### **Democracy and the Appointment of Regional Leaders**

Democracy in principle is a system where the people are the ultimate decision-makers in policy-making. In history, the modern era of democracy began with the Corsican Republic in 1775, which adopted a democratic constitution, including granting voting rights to women.<sup>15</sup> It then spread to other places across Europe, notably after the French Revolution, and reached America in 1778, although full suffrage for all citizens was not implemented until 1965 through the United States Congress, which produced the Voting Rights Act.

Democracy gives rise to the understanding that the people are the source of power, and it is the people who create regulations that will benefit and protect their rights. The right to vote, as one of the forms of democracy, empowers the people to determine their own destiny and choose their own leaders in their respective regions. On the other hand, the sovereignty of the people, as defined in the General Dictionary of the Indonesian Language, signifies the highest power or the right of sovereignty over the government of a state.<sup>16</sup> According to Amiruddin, the word “*kedaulatan*” originates from the Arabic word “*dala yadulu*” or in its plural form “*duwal*,” which means alternating or changing.<sup>17</sup> Mahmud Yunus interprets “*duwal*” to mean alternating or changing as well as giving the meanings of kingdom, state, and power.<sup>18</sup> A French expert, Jean Bodin, introduced the term “Sovereignty” into

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<sup>15</sup> Luke Long, ‘James Boswell and Corsica 1728–1768: The Development of British Opinion during the Corsican Revolt’ (2019) 45 *History of European Ideas*. [817-841].

<sup>16</sup> Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Balai Pustaka 2005). [269-270].

<sup>17</sup> M Hasbi Amiruddin, *Konsep Negara Islam* (UII Press 2000). [101].

<sup>18</sup> Megawati, ‘Deconstruction of Deliberation Implementation and the Populist Meaning in the Perspective of Prophetic Democracy in the Implementation of Pancasila’ (2019) 1 *Journal of Transcendental Law*. [71-91].

political doctrine. According to him, this sovereignty originates from several foreign languages, which ultimately translates to the term “Supremacy,” meaning above and dominating everything.<sup>19</sup>

In the Concise Routledge Encyclopedia of Philosophy, sovereignty is defined as a power possessed by an individual or institution over others or other institutions within its territory. The nature of sovereignty is indivisible, eternal, and absolute.<sup>20</sup> Jean Bodin illustrates sovereignty with the example of God’s power, which cannot be shared with other gods because God’s power is absolute and indivisible. In Bodin’s view, God cannot even create another God, because God’s power is indivisible.

Positions filled by means of elections are generally categorized as political positions, while positions filled by appointment are administrative positions. Positions filled through elections can also be distinguished into several categories, namely direct elections by the people and those indirectly by the people. There are also positions filled through elections, but not by the people, rather by certain bodies that constitute the constituency of the elected position itself. Positions (*ambt, functie*, office), and the holders of those positions or officials (*ambtsdrager, functionnaires*, official) can be distinguished by using the terms state position and government position.<sup>21</sup>

Political positions must be filled through political appointment procedures, while administrative positions are filled according to administrative technical procedures. Holders of state positions are called state officials, while holders of government positions are called government officials. State officials are individuals who occupy or hold public office through political elections or appointments, but their positions themselves are political in nature, whereas government officials are individuals who hold public office through administrative appointments. Positions such as president and vice president, governors and vice governors, regents and vice

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<sup>19</sup> Romi Librayanto, *Ilmu Negara Suatu Pengantar* (Pustaka Refleksi, Makassar 2012).[159].

<sup>20</sup> Eribo Nosakhare Monday, ‘The Concept of Sovereignty in Political Philosophy’ (2021) 2 Zamfara Journal of Politics and Development <<https://zjpd.com.ng/index.php/zjpd/article/view/51>>.

<sup>21</sup> Jimly Asshididiqie, *Pokok-Pokok Hukum Tata Negara Indonesia* (PT Bhuana Ilmu Populer 2007).[420].

regents, as well as mayors and vice mayors as heads of executive government, are political positions that must be distinguished from positions that are administrative and technical in nature.<sup>22</sup>

One manifestation of popular sovereignty is the opportunity for the people to determine their own fate, one of which is by selecting their own leaders through regional elections. Thus, leaders in each region within a country reflect the people's sovereignty as an inseparable part of the aspirations of a democratic society.

In Indonesia, in the regional head elections since 1974 through Law No. 1 of 1974, it was the central government that determined who would become the regional head. The centralized character of governance is reflected in the pattern of appointment and selection of regional heads. If one were to search for what kind of democracy exists, democracy was only found in the process of selecting parliamentary members during the New Order era in the form of electing the DPR (People's Consultative Assembly) sourced from political parties.

The political package laws concerning the election of parliamentary members, which only limit the choices to three authorized parties, cannot be considered democratic. Similarly, the determination of regional heads solely by the president is also an erroneous implementation of democracy. The direction of democracy became clearer in 1998 when reformation occurred in Indonesia, starting with nationwide protests. The resignation of President Suharto at that time initiated a series of significant changes in Indonesia's constitutional system. Changes to the constitution led to many accompanying reforms.<sup>23</sup> The composition of the People's Representative Council changed, and presidential elections shifted to direct voting. Similarly, regional head elections also transitioned to direct elections.

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<sup>22</sup> Martin Kenney, Silvia Massini, and Thomas P. Murtha, 'Introduction: Offshoring Administrative and Technical Work: New Fields for Understanding the Global Enterprise' (2009) 40 *Journal of International Business Studies*. [887-900].

<sup>23</sup> Febrian, Iza Rumesten, Nurhidayatulloh Nurhidayatulloh, and Neisa Angrum Adisti, 'Phenomenon of the Increasing Single Candidates and Backsliding Democratic Values in Indonesia' (2022) 8 *Hasanuddin Law Review*. [248-257].

The election by the Regional People's Representative Council (DPRD) represented a progressive breakthrough considering the practices in Indonesia since the New Order era, where regional heads were appointed by the central government and often were retirees or active military members.<sup>24</sup> With the onset of the 1998 reform, it led to the enactment of Law No. 22 of 1999 concerning Regional Governance, which introduced a new atmosphere where regional heads were chosen by local representatives elected through direct, general, free, confidential, honest, and fair elections. The mechanism for selecting regional heads was then entrusted to the Regional People's Representative Council (DPRD) at both the provincial and regency/city levels.

Furthermore, the era of reformation, brought significant changes when regional heads were finally directly elected starting in 2005. It began with the election of the regent of Kutai Kartanegara, marking the beginning of direct regional head elections. The practice of democracy often teaches every country not to immediately perceive and implement democracy instantly because the conditions of each country are not the same.<sup>25</sup>

Various issues in the implementation of regional elections have subsequently led to a number of lawsuits in the Constitutional Court. Lawsuits over the results of regional elections are filed by losing candidate pairs. Violations of regulations, rampant money politics, and divisions among newly elected regional heads also color the dynamics of democracy in the regions, especially since the proliferation of cheating practices in every election contest.

The practice of buying and selling support is rampant, from the level of political parties to garner support, to the vote counting process.<sup>26</sup> Political practices heavily influenced by money, especially in the efforts of regional candidate

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<sup>24</sup> Dkpp, 'Election Organizer Honorary Council (DKPP)' (*dkpp*, 2020) <<https://dkpp.go.id/ida-budhiati-pilkada-langsung-koreksi-atas-demokrasi-era-orde-baru/>> accessed 2 February 2024.

<sup>25</sup> Aminuddin Ilmar, *Membangun Negara Hukum Indonesia* (Phinatama Media 2014).[117-118].

<sup>26</sup> Rainer Bauböck, 'What Is Wrong with Selling Citizenship? It Corrupts Democracy!' [2018] Debating transformations of national citizenship <[https://link.springer.com/chapter/10.1007/978-3-319-92719-0\\_8](https://link.springer.com/chapter/10.1007/978-3-319-92719-0_8)>.[37-41].

campaigns to secure votes. Ultimately, when elected as regional heads, there is a high possibility of corruption by the regional heads to recoup the losses incurred due to the money politics.<sup>27</sup> Such practices will result in regional heads with less integrity and vulnerable to vested interests. It is also important to emphasize that corruption will also affect the financial and economic conditions of the region and the country.

Direct regional elections began in 2004 marked by the enactment of Law No. 32 of 2004 on Regional Government. The direct regional election in Kutai Kartanegara regency, East Kalimantan, was held in 2005. Subsequently, after the enactment of Law No. 22 of 2007 concerning the organization of general elections, regional elections then entered the electoral regime and the term changed to *Pemilukada*.

In 2014, the Indonesian Parliament (DPR) raised a crucial issue regarding the direct election of regional heads. In a plenary session, the DPR decided to revert the selection of regional heads to an indirect method, where they would be chosen by the Regional Representative Councils (DPRD). This decision has led to disappointment among several parties and has been seen as a step backward in the realm of democracy development.

One of the reasons for the discourse of reverting to indirect regional head elections is the occurrence of high-cost politics, which creates a significant potential for regional heads to fall into the circle of corruption in order to recover their campaign expenses.<sup>28</sup> Other parties also perceive that reverting the electoral process back to the Regional Representative Councils (DPRD) is a regression of democracy. They view such proposals as flawed logic and counterproductive to the discourse of Indonesian democracy.

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<sup>27</sup> M Lutfi Chakim, 'Perubahan Sistem Pemilihan Kepala Daerah Dalam Dinamika Pelaksanaan Demokrasi' (2014) 3 Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional.[113-127].

<sup>28</sup> Sarah Nuraini Siregar, 'Patronage Democracy in Indonesia' (2020) 10 Journal of Indonesian Social Sciences and Humanities.[71-74]. <[https://www.academia.edu/52237274/Patronage\\_Democracy\\_in\\_Indonesia?uc-g-sw=112407991](https://www.academia.edu/52237274/Patronage_Democracy_in_Indonesia?uc-g-sw=112407991)>.

### **Regulation of Simultaneous Election in Indonesia: The Way Forward**

The situation where regional elections occur at different times is seen as giving rise to imbalanced development phenomena in each region due to the various leadership election moments. Therefore, it is being considered to hold regional elections simultaneously. Simultaneous regional elections are part of political reforms aimed at addressing demands for efficiency and effectiveness in the electoral process. Consequently, there are only two forms of elections in Indonesia: National Elections for the legislative and Presidential/Vice-Presidential elections, and local elections for selecting Governors/Vice Governors.

The simultaneous regional elections were subsequently regulated by Law No. 10 of 2016. Based on this law, the implementation of regional elections conducted between 2016 and 2024 will be adjusted to the interests of simultaneous regional elections. This is carried out by shifting the implementation of regional elections so that they can be conducted simultaneously. As a result, there are several regions where the implementation of regional elections has been postponed or accelerated. Several regions experienced vacancies in the positions of regional leaders because their terms ended while the next elections were still far off. In response, the central government, through Law No. 10 of 2016, appointed interim officials. Meanwhile, in other regions, there are regional leaders who will serve for less than 5 years.

The possibility of appointing regional officials outside of the electoral mechanism is indeed contrary to the 1945 Constitution, which in Article 18 states that regional leaders are democratically elected. The phrase “democratically elected” is interpreted by several articles as not necessarily meaning “directly elected by the people.” This interpretation has been articulated, among others, by Parbuntian Sinaga,<sup>29</sup> who elucidated the meaning of Article 18 Paragraph 4 of the 1945 Constitution in Law No. 8 of 2015. According to Article 1, number 1 of this law, elections are the exercise of people’s sovereignty in provinces and regencies/

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<sup>29</sup> Parbuntian Sinaga, ‘Pemilihan Kepala Daerah Dalam Konstruksi UUD NRI 1945’ (2018) 7 Bina Mulia Hukum.[17 - 25]. <<https://doi.org/10.37893/jbh.v7i1.311>>.

cities to directly and democratically elect Governors and Vice Governors, Regents and Vice Regents, as well as Mayors and Deputy Mayors.

Legally, the appointment by the Minister of Home Affairs or the President is regulated in Law No. 10 of 2016 in Article 201 that mentioned:

*Paragraph 9*

*To fill vacancies in the positions of Governors and Vice Governors, Regents and Vice Regents, as well as Mayors and Deputy Mayors, whose terms end in 2022 as referred to in paragraph (3) and those whose terms end in 2023 as referred to in paragraph (5), interim Governors, interim Regents, and interim Mayors are appointed until the election of Governors and Vice Governors, Regents and Vice Regents, as well as Mayors and Deputy Mayors through the simultaneous national elections in 2024.*

*Paragraph 10*

*To fill vacancies in the position of Governor, an interim Governor is appointed from the position of high-ranking official until the appointment of the Governor in accordance with the provisions of the laws and regulations.*

*Paragraph 11*

*To fill vacancies in the position of Regent/Mayor, an interim Regent/Mayor is appointed from the position of high-ranking official until the appointment of the Regent and Mayor in accordance with the provisions of the laws and regulations.*

These provisions have sparked controversy as to whether the appointment of an interim regional leader in Indonesia adheres to the principles of democracy or not. This is because the appointment process, which could be seen as being appointed by the central government, does not necessarily reflect the aspirations of the region, such as the spirit of the autonomy law, which provides opportunities for regions to determine their own fate, including electing their own regional leaders through a direct, public, fair, transparent, and open process, among other criteria.

In the process of discussing the provisions for the election of regional heads in the Constitution of the Republic of Indonesia Year 1945, there are at least two different views. The first opinion suggests that regional head elections should be conducted directly by the people, rather than through a representative system by the Regional Representative Council. Meanwhile, the second opinion

advocates for regional head elections to remain the responsibility of the Regional Representative Council.<sup>30</sup>

On its development, the formulation of “democratically” has sparked a lengthy debate about what model of regional head elections could align with this formulation.<sup>31</sup> Would regional head elections be conducted directly by the people, or would they return to being conducted through the Regional Representative Council? Especially as the Law on the Election of Governors, Regents, and Mayors was about to be enacted. Even after it was enacted as Law No. 22 of 2014 on the Election of Governors, Regents, and Mayors, the debate persisted, advocating for a return to regional head elections through the Regional Representative Council. This led the President to issue Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors, which reinstated direct regional head elections.

The opportunity for the central government to appoint interim regional officials, it would indeed contradict the spirit of the constitution, which aims to foster genuine democratic development. Certainly, in other countries, the election of regional leaders is also conducted with various democratic mechanisms. Each country has different political systems and laws that reflect its values, culture, and societal needs. Some countries may adopt direct elections by the people, while others may opt for selection through representative institutions such as parliaments or regional councils. Additionally, there are also countries that may have a combination of both mechanisms and unique systems according to their own political contexts and histories. It’s important to note that the election of regional leaders in each country is shaped by its own political and legal context.

For example, in South Korea, filling the position of regional leaders involves a democratic method with direct elections regulated in the Local Autonomy Act of 2021. The principle of electing regional leaders is carried out universally, equally,

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<sup>30</sup> Janedjri M Gaffar, *Politik Hukum Pemilu* (Rita Triana Budiarti ed, Konstitusi Press 2012).[93].

<sup>31</sup> Edward Aspinall, *et.al.*] ‘Vote Buying in Indonesia: Candidate Strategies, Market Logic and Effectiveness’ (2017) 17 *Journal of East Asian Studies*. [1-27]. <<https://doi.org/10.1017/jea.2016.31>>.

directly, and secretly, as stated in Article 107 of the Local Autonomy Act of 2021. In addition to regulating the principles of electing regional leaders, the Local Autonomy Act of 2021 in South Korea also governs the resignation of regional leaders. The provisions regarding the resignation of regional leaders are clearly stipulated in Article 111, paragraphs (1) and (2) of the Local Autonomy Act of 2021, which state that if a regional leader intends to resign from their position, they must submit a written notification to the Chairperson of the Regional Council.

The regional leader will be requested to resign on the day when the resignation notice has been submitted to the chairperson of the Local council, thus automatically, the Deputy regional leader, referred to as *Si/Gun/Gu*, will act on behalf of the regional leader if:

1. The position become vacant;
2. They are detained after the commencement of prosecution;
3. They are hospitalized or in a medical institution under the Medical Service Act for 60 consecutive days.

Furthermore, if the regional leader runs for the position of regional leader in another area, then the deputy regional leader will act as the regional leader replacing the regional leader from the date of registration as a regional leader, as stipulated in Article 124, paragraph (2) of the Local Autonomy Act. However, if the regional leader cannot perform their duties due to official business or vacation, the deputy regional leader will still act as the regional leader.

Other example are method in Brazil. The mechanism for the direct election of regional leaders in Brazil is also based on the principles of democracy in Brazil, as seen in Article 1 of the Brazilian Constitution. "Power emanates from the people, who exercise it through elected representatives directly chosen by the people." This article indicates several important points regarding power and elections in Brazil.<sup>32</sup> It reveals that the highest power in Brazil is derived from the people, and

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<sup>32</sup> Detlef Nolte and Luis L. Schenoni, 'To Lead or Not to Lead: Regional Powers and Regional Leadership' (2024) 61 *International Politics*. [40-59] <<https://link.springer.com/article/10.1057/s41311-021-00355-8>>.

the exercise of this power is through the mechanism of empowering representatives directly elected by the people. From this, it is understood that Brazil adheres to the principles of democracy and utilizes a system of direct elections to realize the power of the people.

Article 14 of the Brazilian Constitution is further reaffirmed in Article 82 of Law No. 4737 dated July 15, 1965, which states the election of regional leaders in Brazil entails universal, direct, mandatory, and secret suffrage. Article 82 of Law No. 4737 dated July 15, 1965 specifically refers to the election of regional leaders, but the principle of suffrage remains the same with the addition of the principle of “mandatory” suffrage. When examined closely, this principle of mandatory suffrage is more related to the exercise of the right to vote itself. Therefore, it can be said that using the right to vote in regional head elections is an obligation for the people.

Based on Articles 28-29 of the Brazilian Constitution, the Governors and Vice Governors, as well as Mayors and Deputy Mayors, are elected every 4 years and conducted simultaneously across the country. This is similarly reiterated in Articles 83 and 85 of Law No. 4737 dated July 15, 1965, which also states that the election of regional leaders at every level in Brazil is conducted simultaneously across the country using the majority vote system. Candidates for regional leadership positions are elected as a single unit with their registered deputy regional leaders, as affirmed in Article 2 paragraph 4 and Article 3 paragraph 1 of Law No. 9504 dated September 30, 1997.

In the event that circumstances arise causing a regional leader to be unable to fulfill their entire term in office due to certain reasons, various measures will be taken to ensure that governance continues. Article 14, paragraph 6 of the Brazilian Constitution explains one of the reasons why a regional leader may not complete their term, which is:

*“If a President of the Republic, governor, or mayor of a state or Federal District intends to run for another position or intends to run for reelection to the same position, then the official must resign from the position they currently hold six months before the election”.*

A regional leader is required to resign six months before the election from their position if they intend to run for another position or for reelection to the same position. This action, besides being a political ethic, also aims to prevent the abuse of position and ensure that the candidate does not exploit their position for personal gain during the campaign period. When there is a vacancy in the position of regional leader, there are two ways to fill the vacancy. The first is through a special regional leader election, and the second is by the appointment of a regional leader by the executive committee. Filling the position of regional leader through a special regional leader election is based on Article 56, paragraph 2 of the Brazilian Constitution, which states:

*“In the event of a vacancy in the position of regional leader for any reason, an election will be held to choose a new regional leader if there are still fifteen months remaining until the end of the term”.*

The article depicts provisions governing the process of filling vacancies in regional leadership positions in Brazil with a proactive and democratic approach. If a vacancy occurs in the position of regional leader for any reason, a special regional leader election will be held to choose a new regional leader. This is stipulated when there are still fifteen months or more until the next regional leader election. This approach demonstrates a desire to ensure leadership continuity and maintain regional government stability. Additionally, holding a new election provides citizens with the opportunity to democratically elect new leaders, creating a fair and participatory basis in the process of filling vacancies in regional leadership positions.

Indonesia could learn several valuable lessons from Brazil’s local elections to enhance its own electoral system. Brazil’s election management is closely integrated with its judicial system, with the Superior Electoral Tribunal (SEC) overseeing the entire process, ensuring fairness and justice.<sup>33</sup> Indonesia could adopt a similar approach, empowering a judicial body to strengthen election integrity and reduce political influence. Brazil also implements simultaneous general elections,

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<sup>33</sup> Taufik Firmanto, ‘Estudo de Comparação Institucional Para Solução de Controvérsias Para Eleições de Chefes Regionais Na Indonésia e No Brasil’ (2020) 9 Research, Society and Development.[9] <<https://doi.org/10.33448/rsd-v9i11.10776>>.

combining presidential, legislative, and local elections,<sup>34</sup> which could be a model for Indonesia to streamline its election process, reduce costs, and boost voter participation. Additionally, Brazil's permanent Electoral Courts at both federal and state levels consistently manage elections and handle disputes.<sup>35</sup> Establishing similar permanent courts in Indonesia could ensure consistent oversight and improve election integrity. Moreover, Brazil's election management model emphasizes independence from political influence, with judges appointed based on merit.<sup>36</sup> Adopting this approach could enhance the impartiality of Indonesia's election officials. Finally, Brazil's highly effective election dispute resolution system offers a model for Indonesia to establish clear, transparent procedures for resolving disputes, thereby increasing public confidence in the electoral process. By implementing these practices, Indonesia could strengthen its electoral system, ensuring greater fairness, transparency, and efficiency in its elections

Another explanation regarding the method of filling vacancies in regional leadership positions, namely through appointment. The article states that vacancies in positions are filled by appointment by the executive committee without going through a special election process. Although the article does not specify any time requirements for this appointment method to be implemented, we can refer to Article 56, paragraph 2 of the Brazilian Constitution, which stipulates that the direct election method for filling vacant regional leadership positions is implemented when a position is vacant for 15 months or more until the next regional leader election. Therefore, the appointment method by the executive committee can be implemented when a regional leadership position is vacant for less than 15 months until the next regional leader election.

Returning to Indonesia, the phenomenon of simultaneous regional elections, full of dynamics, continues to test the democracy in Indonesia. The Constitutional Court, through Decision Number 27/PUU-XXII/2024, declared that Article 201

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<sup>34</sup> *ibid.*[11].

<sup>35</sup> *ibid.*[12].

<sup>36</sup> *ibid.*

paragraph (7) of the Regional Election Law, which originally stated, “Governors and Vice Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors elected in the 2020 Election shall serve until 2024,” is contradictory to the 1945 Constitution of the Republic of Indonesia and does not have legally binding force as long as it is not interpreted as, “Governors and Vice Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors elected in the 2020 Election shall serve until the Governors and Vice Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors elected in the national simultaneous election of 2024 are inaugurated, as long as it does not exceed 5 (five) years of their term.

The request for a constitutional review of the Regional Election Law was submitted by 13 regional leaders, namely Al Haris (Governor of Jambi), Mahyedi (Governor of West Sumatra), Agus Istiqlal (Regent of Pesisir Barat), Simon Nahak (Regent of Malaka), Arif Sugiyanto (Regent of Kebumen), Sanusi (Regent of Malang), Asmin Laura (Regent of Nunukan), Sukiman (Regent of Rokan Hulu), Moh. Ramdhan Pomanto (Mayor of Makassar), Basri Rase (Mayor of Bontang), Erman Safar (Mayor of Bukittinggi), Rusdy Mastura (Governor of Central Sulawesi), and Ma'mur Amin (Vice Governor of Central Sulawesi).

In its legal considerations for the decision, the Constitutional Court stated that it affirms that Article 201 paragraph (7) of the Regional Election Law allows regional leaders and deputy regional leaders elected in 2020 to continue their duties and positions until the inauguration of regional leaders and deputy regional leaders elected in the national simultaneous election of 2024, as long as it does not exceed a term of 5 (five) years. Because the Court's interpretation of Article 201 paragraph (7) of the Regional Election Law does not align with what the Petitioners requested, the arguments of the Petitioners are legally justified in part.

The decision of the Constitutional Court was marked by a dissenting opinion from Justice Daniel Yusmic P. Foekh. According to Daniel, the Court should have further examined the case, at the very least by hearing the government's testimony regarding the evaluation of the appointment of acting regional leaders following Constitutional Court Decision Number 37/PUU-XX/2022 and the new interpretation

of Article 201 paragraph (5) of Law No. 10/2016 in Constitutional Court Decision Number 143/PUU-XXI/2023.

Furthermore, the Minister of Home Affairs of the Republic of Indonesia had submitted a Letter Number 100.4.8/875/SJ dated February 19, 2024, regarding a Request to Provide Government Testimony, which essentially requested the Chairman of the Constitutional Court of the Republic of Indonesia to be given the opportunity to provide Government Testimony in the trial process of Case Number 27/PUU-XXII/2024. Therefore, Daniel argued that the Court should have continued the examination of the case to the plenary session stage to obtain more comprehensive and accurate information. Therefore, it can be understood that the Constitutional Court seeks to uphold the results of democratic regional elections as an expression of the will and sovereignty of the people who elected them. The people, as the sovereign owners, have the right to be led by the regional leaders they have chosen themselves until the end of their term, which is 5 years.

The concept of democratic regional leadership appointment refers to the process in which the people have a primary role in the direct or indirect election of regional leaders. The main principles of this concept are active participation of the people, equality in voting rights, transparency, and accountability. Some important aspects of democratic regional leadership appointment include:

1. Direct Election: The people have the right to directly vote for the regional leader they desire through the electoral process.
2. Indirect Election: In some systems, regional leaders are chosen through representatives, such as council members or other institutions, who have been directly elected by the people.
3. Equality of Voting Rights: Every citizen has equal rights in the election of regional leaders without discrimination based on gender, race, religion, or other backgrounds.
4. Transparency and Accountability: The process of selecting regional leaders must be transparent, with information easily accessible to the public. Candidates should clearly disclose their programs and plans to voters, and they must be accountable for their actions during their term in office.
5. Oversight and Law Enforcement: There should be independent institutions to oversee the election process, as well as law enforcement against violations of ethics and laws that occur during campaigns and the term of regional leaders.

By prioritizing democratic principles in the appointment of regional leaders, it is hoped that the elected leaders will represent the interests and aspirations of the people and be accountable for their actions for the progress and welfare of the community. Democracy is not built in one night. In fact, in some countries, democracy takes more than a decade to establish a good democracy. There is no perfect democracy, but hoping for the best certainly cannot be just a mere hope.

The first alternative for filling vacant positions of regional leaders in Indonesia is to assign the vacant position to local representative institutions, one of which is the Regional Representative Council (*Dewan Perwakilan Rakyat Daerah or DPRD*). In some other countries, this institution is referred to as the regional council, which has the authority to determine who will temporarily fill the position of regional leader. In Indonesia, the existence of the DPRD can certainly represent this concept, especially since the selection of DPRD members has gone through a democratic mechanism of direct elections, thus preserving the democratic essence.

The second alternative is through adjusting the legislation to anticipate vacancies in the positions of regional leaders. Currently, the mechanism involves appointing a deputy to fill the position. However, if vacancies occur simultaneously, existing legislation should provide a definitive and sequential alternative for filling these positions, starting from the highest position to the lowest, which can fill the vacant positions of regional leaders. This could serve as the second alternative, considering that appointments by the central government may not always align with the aspirations of the local regions. If that alternative cannot be implemented, then the third alternative is to appoint the temporary position to the chairman of the Regional Representative Council (DPRD) considering that the leadership of the DPRD is also a result of a democratic direct election.

## **Conclusion**

Understanding democracy is not difficult if all components of nation have a high commitment to implementing it. General election to determine a regional head can be held directly or indirectly. This is only related to mechanisms, but the

substance is not a disturbed thing. Indonesia can implement one of the methods, either directly or indirectly, but as long as the democratic conditions includes openness, fairness, honesty and proving opportunity for all to be implemented consistently, then democratic values can still be maintained in the interests of people's sovereignty and interests of country. Lessons from South Korea and Brazil are the fact that The democratic transition was implemented with the aim that regional elections in Indonesia are not only important for local government, but are also often considered an indicator of national political strength. It is not just about methods but the value of democracy as the best way to preserve people sovereignty as good as possible.

It would be a better option if the local leaders are coming from local human resources as the idea of democracy basically talking about maintaining the sovereignty and the will of the people as the highest law.

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