

## The Implication of Direct Regional Chief Executive Election on Democratic Development of Unitary State of Republic of Indonesia

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### ABSTRACT

*The implication of regional chief-executive election (Pemilukada) can be seen from viewpoint of governmental management and social milieu results in a good impact on viability of direct democracy in unitary state of Indonesian republic (NKRI), since from both sides of governmental and social management, the implication of Pemilukada fosters the direct democracy, that is from the perspective of governmental management, the Pemilukada results in (1) direct election of regional chief executive causes decreased arrogance of DPRD who frequently claims as the only institution of representative mandatory holder, (2) the direct election potentially limits the power and authority of DPRD such as its function of electing, asking the responsibility and dismissing regional chief executive, (3) qualified regional chief executive, (4) the election potentially creates a more productive, effective and stable regional government, and (5) the election potentially stops the practice of money politics. From the perspective of social milieu, the Pemilukada results in positive implication on direct democracy, because (1) it increases political awareness of regional people, (2) direct election of regional chief executive will trigger political activity of the people which opens wider opportunity for everybody to participate and develop civil organization, (3) it widens local public access to influence the process of making decision related to public interest, (4) the election of regional chief executive will motivate local media to publish more actively the process of the direct election, (5) the election will foster the spirit of independence in the body of political party.*

**Keywords:** Democratic, executive election, development, republic of Indonesia

### INTRODUCTION

Various legal rules in direct election of regional chief executive (Pemilukada) have been made to protect and regulate the implementation of the direct Pemilukada in order to restore the people sovereignty.

Many problems arise in the direct Pemilukada these days, it has encouraged the government to make regulations and design RUU of Pemilukada. According to the secretary of the interior, Gwang Fauzi:

“Government will propose two models of simultaneous regional chief-executive election (Pemilukada) in the RUU of Pemilukada. They are national simultaneous Pemilukada and provincial simultaneous Pemilukada. The National Pemilukada is carried out by dividing the area into two phases. The first step is carried out for regional chief executive (governor, regent and mayor) whose tenure of office will end in 2015 and the second step is carried out on the second term or period whose tenure of office will end in 2018. With this model of national election there are only two phases of regional chief executive election in the period of five years. And provincial election, i.e. the regional chief

executive election is carried out in an area (province). It means governor, regent and mayor in one area are elected simultaneously.”

Many conflicts have occurred and still continue in the direct Pemilukada these days are coped with by government by proposing the bill (RUU) about regional chief executive election (Pemilukada), where the Pemilukada will be held simultaneously with two models of election, the Pemilukada on national basis and provincial basis so that it is expected those elections will save time and cost of the Pemilukada, because in five years there are only two pemilukadas. But the statement from the secretary of interior has not clear, whether the pemilukada will be carried out directly or indirectly, since general director of regional autonomy from ministry of interior, Djoehermansyah Djohan has said:

“In the RUU of Pemilukada, governor election will be carried out by way of DPRD, because the governor authority is limited, as representative of central government. Moreover, the cost of direct governor election is too expensive and potency of conflict after Pemilukada needs to be considered as well.”

The statement indicates that in the RUU which is being discussed by DPR there are two types of Pemilukada, those are direct Pemilukada for electing regent and mayor and indirect Pemilukada for electing governor, because of cost-efficiency in the implementation of Pemilukada.

Deputi Direktur Perkumpulan untuk Pemilu dan Demokrasi (PERLUDEM), Veri Junaidi said that:

“RUU proposed by government is a setback for democracy, because the election of governor will be brought back to the old system, i.e. chosen by DPRD. The reason of high cost in the election is weak, since cost-efficiency in the Pemilukada cannot disregard democratic values. For cost-efficiency, the Pemilukada can be combined at once simultaneously so that the cost is cheaper.”

The government’s idea of bringing back the direct governor election to indirect election through DPRD in the RUU of Pemilukada, according to Veri Junaidi is a setback for democracy in Indonesia, since the direct system has been applied only a few years ago and it will be returned to the indirect system, so that it can inhibit the development of democracy in Indonesia. The government should still implement the direct democracy by combining the pemilukadas in one time simultaneously, so that it will save money and it will not disregard democratic values.

For Pengurus Besar (main functionaries) from NU, however, the direct Pemilukada is more detrimental than beneficial, so that in the Munas NU in Cirebon NU recommended that direct Pemilukada reverts to indirect Pemilukada in the election of governor, and the election of regent and mayor reverts to DPRD. According to Sekretaris Syuriah PBNU, Abdul Malik Madanly:

“NU recommends that government reexamines the direct into indirect pemilukada chosen by DPRD, because in the direct Pemilukada an interaction occurs between people and the candidate who will be chosen. People will prefer money to common interest, because the elected figures don’t contribute direct effect to the people.”

Munas PBNU which recommends the government reconsiders the direct into indirect Pemilukada, because it sees adverse effect from attitude of the people developing money oriented than common interest, it actually has been comprehended by government in the RUU of Pemilukada. But the matter is still at issue in the legislative and public, for still there

are many people who wants the pemilukada to be carried out directly for democracy in Indonesia.

To cope with conflicts frequently arising in the direct Pemilukada, AA Gde Febri Purnama Putra said that

“The achievement in creating peace in the conflict of direct pemilukada cannot basically be separated from the performance of all joined parties from the inside state element. In addition to conflict resolution is based on the law, there are ways of resolution outside formal base which can be used to resolve conflict of direct pemilukada. One needs to consider several things in solving the conflict of direct pemilukada:

1. First step from each party in preventing the widespread of conflict,
2. Maintain neutrality and preserve the coordination.
3. Legal institution/court as a place of mediation.
4. Make use of tradition in developing relation between state, elite and people.
5. Peace is preserved by non-formal approach.

The conflicts of direct pemilukada, according to AA Gde Febri Purnama, can be resolved peacefully if the elements of the state can cooperate maximally. Resolution of direct-election conflict which is carried out by state, in this case the implementers of direct Pemilukada, such as regional government, KPUD, participants of pemilukada and teams and also observers can work well if they have the same perception to prevent the widespread of conflict by way of communicating. Government, KPUD and Panwas must preserve neutrality and coordination. Should the conflicts or disputes arise, those will be resolved immediately via legal institution or court; peace will be created between the disputed candidates. The conflict resolution of direct pemilukada can also be carried out by making use of the existing tradition in the region where the election is held, in the state relations, elites and public with moral, social and cultural approaches, so that the problem can be minimized to reach the peace. It can also be reached via non-formal approach in the form of mediation with the conflicted parties.

Democratic process which is carried out in the election of regional chief executive in Indonesia is one of processes for restoring people sovereignty directly, because before reformation took place, the election of national and regional leaders used representative system by way of supreme institution, that is MPR and regional institution, DPRD, but after reformation the sovereignty is returned to the people by applying direct democracy via direct election and direct pemilukada. According to Immanuel Kant, people sovereignty is

“To enforce the law and to guarantee freedom of citizen (the people) in accordance with the laws, people make the laws; because the laws are manifestation of people will which represents the highest power.”

Frans Magnis Suseno sees people sovereignty “whenever people participate directly and indirectly to determine the fate and future of the state.”

From both statements, the process of direct regional chief-executive election is people have rights and duties to choose and to be chosen as regional leader via formal media democratically and honestly to determine the future of the region and the people, so that people sovereignty, in the process of democratic development in Indonesia, is to elect regional or local leaders democratically, so that people and regional future will be striven for by leaders who have moral conduct and clear vision and mission in implementing development.

## **The Implication of Direct Pemilukada on Development of Democracy**

In the research on juridical implication on democratic development in Indonesia, the writer presents some concepts which support the research; those are people sovereignty, state, democracy, implication, pemilukada and implication of pemilukada.

Supreme power or sovereignty can be held by an individual, a group of people, a body carrying out the function of legislation and governmental functions in a state. The word sovereignty comes from English which has the same meaning, *sovereiniteit* from Dutch meaning the highest. Talking about people sovereignty is talking about power, because sovereignty is about the highest power to rule in a state. Sri Soemantri explains the supreme sovereignty in the country is God and the highest in the country is the country (state) itself.

Padmo Wahyono said that sovereignty consists of God sovereignty, i.e. head of the state who holds the power is considered as representative of God, or on behalf of God, so that there is no chance to resist him or her, and king sovereignty, the king as head of the state is considered as the holder of supreme power in a state. State sovereignty means everything is the state, because by nature the state has an absolute power. Law sovereignty means everything must be based on law because the sovereign is law of power seized by the law and people sovereignty. In this research, the writer prefers an approach to people sovereignty related to the process of Pemilukada.

People sovereignty is considered as “sovereignty where the head of state that holds the power of the state is chosen from the people and by the people, since the people constitute the highest sovereignty. According to Mahfud MD:

“People sovereignty or the power of government is in the hands of the people has three meanings, (1) government of the people is related to the legitimate government, (2) government by the people; the government that exercises the power on behalf of the people and the supervision is carried out by the people and (3) government for the people, that is a government that gets mandate of power given by the people for the people.”

Based on the aforementioned statements, people sovereignty or sovereign power in the hands of the people has three understandings, those are; government of the people, closely related to legitimacy to govern is a government has acceptance and support from the people. Government by the people means the government is running the power on behalf of the people and the supervision is carried out by the people and government for the people, that is, a government which accepts the mandate of power granted by the people for the people.

The Pemilukada in a country that adheres to the system of unitary state has significant effect on democratic process carried out as manifestation of the people the power holders of state sovereignty, because in a democratic country the holder of the highest power is the people, where the implementers are chosen by way of general election, so that the form of the state has influence on democratic process. According to Hendarmin Ranadireksa,

The form of unitary state in the democratic system is divided into two forms; those are unitary state with centralistic pattern and unitary state with pattern of decentralization. Centralistic unitary state is the system of state which sets the entire area of the country is the area of administration and law. The areal division of public administration is based on the requirement of centralistic management. De-centralistic unitary state arose because the centralistic is not effective and contradictive. The unitary-state model of de-centralistic government and power de-concentration are no more based on long struggle between centre and region, but by common interest that only by way of decentralization the power of government management can become more effective and efficient...

Based on the statement made by Hendarmin, it can be seen that the form of unitary state has a significant influence in process of democratic implementation; where in the unitary state which adheres to unitary state model of centralistic government depends heavily on central level, from the viewpoints of executive and legislative authorities, where the power of central government over the regional government is very great, so that it can inhibit the implementation process of direct democracy. With the result that second model appears, i.e. unitary state with de-centralistic model, power is no longer based on struggle between center and region, but by common interest that only by way of decentralization the power of government management can be more effective and efficient, so that democratic implementation in the country which adheres to unitary state system with de-centralistic model, democracy will have good implication, since regional government is granted the authority to exercise its power autonomously. This condition enables the people to have the power to participate and control the government in the form of implementing the direct democracy, the result is that direct election of regional chief executive.

According to Moh Kusnadi and Bintan R Saragih,

“It is called by unitary state when the authority of central government and regional government is not the same. The authority or the power of central government is dominant in the country. In the process, however, unitary state has applied system of de-concentration, i.e. transfer of authority from central government to the regional officers and system of decentralization is transfer of governmental matters from central government to the regional government.”

Talking about pemilukada as a process of implementing direct democracy cannot be separated from the meaning of democracy. According to Ivor Jennings, democracy is government of the people, by the people and for the people. Democracy comes from the word *demos* meaning the people or population of a place and *crates* meaning power or sovereignty which means to rule.

Robert Dahl stated that a system is called democracy if it fulfills prerequisites among other things accountability, open rotation of political recruitment-authority, general election and people enjoy basic rights. Mahfud MD sees democracy always grants an important position to the people, even though proportionally the implication in various countries is not always the same. Based on aforementioned statements, the meaning of democracy that a country which adheres to democratic system is implemented based on the will of people in majority but it does not disregard the minority.

Democracy in the context of pemilukada is direct democracy to elect regional chief executive and vice chief executive as stated in the Constitution of 1945 which has been amended and the Act of regional government No 32 of 2004. The election of regional chief executive in province, regency/city which so far is carried out refers to second amendment of 1945 Constitution, article 8 point 4; “Governor, regent and mayor each as regional governmental head of province, regent and city (municipality) are elected democratically.” The Act No 32 of 2004 about regional government gave legal ground on pemilukada stated in article 25 point 5; regional head (chief executive) and regional vice chief executive as meant at points 2 and 3 are elected as one set directly by the people. In article 56 points 1 and 2; “Regional chief executive and the vice are elected in one set of candidates carried out democratically based on principles of direct, general, free, confidential and fair.” So the pemilukada has rules and clear legal grounds, i.e. the pemilukada is carried out directly and democratically by promoting the principles of direct, general, free, secret (classified), honest and fair, where the implementer of the pemilukada is KPU and responsible to DPRD. It is stated in the

amendment of 1945 Constitution that regional chief executive and the vice are elected directly in the pemilukada.

Implication, according to Indonesian dictionary, is meant as involvement or being involved or has to do with, so that in the concept of the research, the implication is meant as involvement or being involved or has to do with. The direct pemilukada in the act no 22 of 2007 on the implementer of pemilukada, the pemilukada is meant as general election for electing regional head and the vice directly in the unitary state of Indonesia based on Pancasila and Constitution of 1945.

So the implication of direct pemilukada is the involvement or the effect of general election to choose regional chief executives and the regional vice-chief executive directly in the unitary state of republic of Indonesia based on Pancasila and Constitution of 1945.

The election of regional chief executive or pemilukada, to develop democracy in Indonesia, must have advantageous effect or implication on the country and the people. According to Cornelis, regional chief executive election in a democratic state is to bring about regional and national leaders via democratic, honest, free, fair and general election and as media for regeneration of regional or national leadership. The pemilukada is also a tool to strengthen regional autonomy, since the achievement of regional autonomy among other things is determined by local leader brought about by pemilukada democratically.

## **CONCLUSION**

Based on analysis, utilization of the system of direct election indicates development in formation of regional democracy in the framework of political liberalization. The political liberalization was held at the time of President BJ Habibie in response to demand of transformation in the system and political format following the resignation of President Suharto. So, the system of direct election is the result from long struggle to find out the format of regional democracy. Certainly, the system of direct pemilukada resulted in optimism and pessimism. The Direct Pemilukada is considered as manifestation of restoring the basic rights of the people by granting the entire authority in the framework of regional-leader recruitment.

Regional chief executive election in the positive law is the guarantee of the basic rights, people sovereignty applied by way of direct election by punching ballot, and the principle of majority, in the form of final decision in the election is major vote. The strength of the Pemilukada is that it has clear regulation of the election, and the existing limitation by UU No 32 tahun 2004 on regional government and PP No 6 Tahun 2005 on election, legalization of nomination, and discharge of regional chief executive and regional vice-chief executive, in granting the basic rights in the election. And the weakness is the guarantee of the basic rights is too limited in detail by UU no 32 tahun 2004 and direct election is carried out only in the form of punching ballot.

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