

Setting the Election Law Politics Based on the Head of the Constitution

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ABSTRACT

This study starts from the basic assumption of the need for political change in the law on local elections that are now directly applied in Indonesia, this is based on the fact that occur in the community that the local elections are directly applicable for 9 years this raises many issues new negative impact on the development of democracy at the local level. The purpose of this study to analyze in depth about what is the appropriate legal politics for Indonesian people who are multi- cultural diversity and this , to achieve the objectives of this study The author uses normative juridical approach that examines the legal terms of the local elections that fits into effect in Indonesia , in addition , the authors also analyzed descriptively on expert opinion and the opinion of public figures both from academics, practitioners, NGOs, and institutions / organizations, government and non- governmental organizations regarding direct local elections. The authors of the study found that the direct election of regional heads need to be formatted again , which is suitable for Indonesia is the local election system are varied or diverse , given the diversity of Indonesia is both in terms of social , cultural , economic , customs , and geographical location .

Keywords: The election, politic of law, local elections

INTRODUCTION

In terms of the development of democracy, the Indonesian people have a lot of experience systemic democracy, from Liberal Democracy, Guided Democracy and Pancasila democracy, this sort of thing cannot be separated from the Constitution that was once used the Indonesian people in the administration of the country. According to Ibrahim Harmailly Constitution or the Constitution in force in Indonesia in four periods.

- a. The period of August 18, 1945 - December 27, 1949, the 1945 Constitution applies
- b. The period December 27, 1949 - August 17, 1950, the Provisional Constitution applies RIS 1949
- c. The period of August 17, 1950 - July 5, 1959, Provisional Constitution applies in 1950
- d. The Period 5 JULI 1959 - Now. Re-constitution applies 1945.

According to the author of this now applies NRI 1945 Constitution as amended, means the fifth amendment since Indonesian independence, from the application of the Constitution that are used in the administration of the country shows that democracy in Indonesia is experiencing a rapid development, it is characterized by the freedom to choose its leaders including selecting the head area. At the beginning of the independence of Indonesia using a constitutional democracy, then political developments in Indonesia with the implementation of the 1949 Indonesian Constitution RIS using liberal democracy as the form of the state is based on the Federal Constitution of 1949 RIS, and political developments continue to evolve so that the Provisional Constitution enacted by Guided Democracy, and then to the Pancasila Democracy now this.

Local elections is a form of direct democracy development at the local level, where its enforcement is based on Law no. 32 of 2004 on Regional Government, where before the birth of this law, local elections through a representative. Over time, direct local elections raises many new problems including, direct local elections require high cost, the money politics, conflict often occurs both horizontally and vertically groups, in addition to rampant corruption by regional heads.

Local elections in Indonesia before the reforms stipulated in the legislation as follows: No. Law 1 of 1945 on the Rules of the National Committee on the Status of Regional Law No. 22 Year 1948 on Basic Rules of Determination of the Local Government, Act No.1 Year 1957 on the Principles of Local Government, Law No.18 Year 1965 on the Principles of Local Government, Law No. 5 of 1974 on the Principles of Local Government, whereas after the reform of local elections stipulated in Law No.22 of 1999 on Regional Government which was later replaced by Act No.32 of 2004 on Regional Government, and updated by Law No. 8 of 2008 on the Second Amendment Act No.32 of 2004 on Regional Government.

The use of local election system directly as outlined in Act No.32 of 2004 on Regional Government, is expected to deepen democracy in Indonesia, namely the transition system of government from an authoritarian government to a democratic government, in addition to the direct local elections are also expected to bring the following expectations:

1. Direct local elections local government establish political legitimacy.
2. Direct local elections also promote the establishment of accountability and responsiveness of local leaders.
3. Direct local elections can realize the development and empowerment of citizenship.
4. Local elections indirectly checks institutionalize mechanisms and balances between institutions in the area, so there is no reinforcement at one institution.
5. Direct local elections create an opportunity for political parties to take part in regional development.
6. Direct local elections also have an impact on women candidates to contest the local elections.

Over time the system direct local elections many questioned whether it can be continuously applied or immediately replaced with another election system. The fact that occur in the community that the system of direct local elections that have been put in place for 9 years direct local elections generated a lot of negative excesses are:

1. Direct local elections costly both for the organizers direct local elections (Election Commission) and prospective head region.
2. Occur in the implementation of political money direct local elections resulted in the destruction of the moral and mental general public.
3. Local elections more lose than good.
4. Often conflicts occur between groups that result in anarchic action.
5. Direct local elections initially expected to produce a good leader is not proven , just a lot of head area involved corruption
6. Many areas are threatened with bankruptcy due to financing direct local elections that require a high cost.

In the Constitution of NRI In 1945, Article 18 paragraph (4) states: Governors, Regents and Mayors respectively as head of the provincial government, district, and city elected democratically. In Article 18 paragraph (4), the word "democratic " has a meaning that is

vague or ambiguous norms that contains multiple interpretations of the local elections in Indonesia, either through direct election system by the people, either through representation by the Legislative Council, and also in the form of another, resulting in legal uncertainty in the local elections in Indonesia .

Definition of the word "democratically" in Article 18 paragraph (4) Constitution of 1945 NRI has a flexible meaning that gives an opportunity to the legislators to determine the local election system in accordance with the conditions of a particular area, whether directly or indirectly by even people in other ways. It is also intended as a form of respect to the constitutional traditions and cultural diversity among the people of different regions.

The Political Implications of Law Setting the Current Local Elections on the Development of Democracy and the Constitution in Indonesia

Political implications of the law setting the current local elections could affect the development of democracy and constitution, this can be seen in terms of positive and negative towards the setting local elections directly, if we compare the negative impacts of regulation elections directly to the benefits obtained then more loses and therefore many people who suggested that direct elections to think again or need to be reformatted with another election system. In terms of setting the local elections did take place in the constitution of legal uncertainty on local elections that we can look at the debate on the constitutional changes of 1945 treatise or after the agreement on Article 18. Due to the vague norms that affect the development of Indonesian democracy and the constitution to the next and still the polemics of how forms of democracy and the constitution relating to the appropriate local election.

1. Constitutional Theory

The theory of the constitution according to Wirjono Projodikoro that the term constitution comes from the verb *constituer* (in French) which means forming, that is forming state. So that the constitution contains the beginning of all regulations on a country, thus a constitution containing a basic rule (fundamental) of the joints of the first to establish a large building, namely the state.

Legal political arrangements direct local elections are regulated in Law Number 32 Year 2004 on Regional Government as the elaboration of Article 18 paragraph (4) of the Constitution of 1945 which NRI phrase "democratic" meant as a direct local elections by the people. Article 18 paragraph (4) this implies that blurred so as not consistent with the theory in which the constitution as the constitution as a basic rule should not contain multiple interpretations, in the Constitution NRI 1945 local elections were included in the regime, while at the level of local government law legislation , local elections can be entered in the electoral regime and can also be included in the local government level regime, that will cause continuous polemic without any settlement solution that is acceptable to all components of the nation.

Political implications of the law setting the local elections this time to the development of Indonesia's democracy and constitutional implications or unfavorable impact on the development of democracy and the constitution, this is attributed to the theory that the Constitution proposed by the Projodikoro Wirjono who say that the Constitution includes the basic rules (fundamentals) of the first joints to enforce buildings, namely the state constitution as the basic rule should not have blurred sense causing multiple interpretations that result in lack of legal certainty regarding the local elections that affect adversely the development of Indonesia's democracy and constitution. The author agrees with the theory of the Constitution proposed by the Projodikoro Wirjono.

Constitutional theory K.C. opinion Wheare F.B.A. which says that the constitution is used to describe the entire system of government of a country, a collection of rules and regulate or govern the government. If this theory is associated with the political implications of local election laws currently on the development of constitutional democracy in Indonesia and not in line with the intent of the Constitution and the theory put forward by K.Wheare FBA where the constitution as a set of governing rules are rules that are not lead to multiple interpretations so that the rules used to govern which creates legal certainty. Another case that the rules used to regulate direct local elections raises multiple interpretations so bad implications on the development of democracy and the constitution in Indonesia. The author agrees with the theory of the Constitution proposed by KC Where. FBA because of the reality that occurs in the setting local elections in Indonesia are still not ensure legal certainty

2. Election Theory

Election Theory by M. Karim Rusli, where elections are one means to enforce the democratic order (popular sovereignty), which serves as a healthy and enhance democracy, not as an objective in itself.

Legal political arrangements direct local elections as outlined in Act No. 32 of 2004 on local elections, where local elections are not directly included in the Electoral Regime (Regime Election not) but the implementation of direct local elections using election officials the Election Commission , the Election Commission law is no hierarchical relationship with the Central Election Commission so that the Election Commission specifically authorized in this legislation without relating to the Central Election Commission as a parent. Accountability in local elections, the Election Commission is accountable to Parliament; it is thus not consistent with the theory of election where the election upholds the principles of direct, public, free, and fair and implications for the development of democracy in Indonesia. Similarly, if we connect the theory put forward by M. election Karim Rush is where the election serves as a tool to nourish and enhance democracy, election organizers this means in terms of local elections by the people who originally implemented by the Election Commission is not associated with the Central Election Commission and accountability to Parliament. This shows that the legal regulation of political direct local elections by the people did not show any independence of the Election Commission although now been tested material to the Constitutional Court and has been canceled. The author agrees with the theory proposed by M. Rusli.

Political Model Law Setting Local Elections In Accordance With the Principles of Democracy and the Constitution of Indonesia in the Future

Model legal or political system settings for Indonesian local elections in the future as a replacement for the direct election by the people who organized the Law No. 32 Year 2004 on Regional Government, is a model / system of elections Various / Varies considering Indonesian people have characteristics that differ from region to region. Various election system adapts to the characteristics of each region in Indonesia, which in real terms is not the same from region to region so it cannot be applied the same rules to all regions in Indonesia.

1. Unitary Theory

The theory of the Unitary State of the decentralized system according Joeniarto, in the unitary authority of all the affairs of state became fully from government (central) his. If the country in question using the principles of decentralization, which is formed in areas of local government is entitled to regulate and manage his own household, can be handed over to him certain matters to be taken care as their own households.

The use of a variety of models or the election system as a substitute for direct election arrangements set forth in the Law. 32 of 2004 on Regional Government, tailored to the characteristics of each region, in theory decentralized unitary state with the right system for the area to determine the election system in force in the area if the election is interpreted as one of the implementation of regional autonomy . Besides, the condition of Indonesia's vast territory and regional characteristics that vary from one region to another region it is not possible to apply the same rules regarding the administration of elections in particular the theory of unitary state under a decentralized system could be submitted to the setting of the election area through regulation of each region .

The theory of a unitary state with a decentralized system proposed by this Joeniarto where Unitary Theory with emphasis on decentralized systems to regulate the right areas and manage his own household They include in it to regulate and administer the election system in force in the area, because in real terms the government knows exactly on the characteristics of its own country. if it is connected with the political model of legal regulation that local elections in accordance with the principles of democracy and the constitution for the upcoming Indonesian political model of law enforcement local elections vary according to the characteristics of the areas concerned, because the politics of law enforcement settings when local elections is applied uniformly on the autonomous in Indonesia. As a result inconsistent with the theory of a unitary state with a decentralized system, giving rise to new political persolan local election law at this time. The author agrees with the theory of the Unitary State of the decentralization system proposed by Joeniarto is due to the fact it is the real nation of Indonesia consists of various social, cultural, economic varying characteristics besides unequal across regions with other regions.

2. Theory of Democracy

Democracy is the theory put forward by Abraham Lincolnt, that democratic government is a government of the people, by the people and for the people.

The use of the model settings / election system settings vary as a substitute against direct local elections as outlined in the Law. 32 of 2004 on Regional Government, when we connect the theory of democracy where democracy is not to be interpreted as the people directly involved in the administration of state affairs of the political model of legal regulation diverse local elections adapts to the characteristics of the area concerned in the sense in accordance with the wishes and will of society area concerned and according to writer better reflect the democratic sense although the shape does not have to directly. In democratic theory proposed by Abraham Lincoln's emphasis on democratic governance in which rulers or leaders who run the organization of government should be based on the will and desires of the community. The author agrees with the theory put forward by the Democratic Abraham Lincoln because somehow in a democracy, governance must be based on the aspirations of the community in accordance with the principles or characteristics of a democratic state.

3. Theory of Regional Autonomy

Theory of Regional Autonomy according by J. Wajong, Regional Autonomy is the freedom to maintain and promote the special interests of the region, with its own finances, determine its own laws, and its own government.

Various models use election arrangement / setting Varies as a replacement for the direct local elections as stipulated in Law No. 32 of 2004 on Regional Government, when connected with the theory of regional autonomy, the right of the area to determine the prevailing system of elections in the region, because the local government knows exactly about the conditions in their own areas. Besides, according to the Theory of Regional Autonomy for the content of

regional autonomy in the area of diversity according to the characteristics of each region and that the election system is associated with the use of a variety of artifacts suitability for regional autonomy itself NRI diversity in accordance with the Act of 1945 amendments to Article 18 paragraph (1), which contains provisions : the relationship of authority between the central government and local governments , provinces , counties , and cities governed by the law with due regard to specificity and diversity of the region .

Regional Autonomy Theory proposed by J. The Wajong emphasis on the area of freedom for its own domestic affairs and also promote special interests in areas where regional specificity Indonesia varies from region to region, and if the model is associated with a political arrangement diverse local elections because there is conformity election diverse system adapts to the characteristics of the area in question. And the author agrees with the theory of regional autonomy put forward by J. Wajong with the consideration that it reality Indonesian nation composed of different regions that have different characteristics in addition to the constitutional consideration that the constitution did not make valid elections system, any system permitted by the Constitution of 1945 NRI but the processes and mechanisms should reflect the way -democratic way.

CONCLUSION

1. Political implications of local election laws setting directly to the development of democracy and constitutional implications are less well due to the lack of legal certainty to legal political setting local elections. In the realm of constitutional level local elections are included in the realm of local governance regime but at the level of legislation could be included in the realm of electoral regime and can also be included in the realm of local governance regimes that influence the development of democracy and constitutional for Indonesia in the future.
2. Political models of legal regulation for the local elections as a future replacement system settings direct local elections stipulated in Law no. 32 of 2004 on Regional Government, is setting a model local elections diverse or varied. It is based on that the Indonesian nation made up of diverse and different characteristics from region to region either on education , geographic location , ethnicity , customs , community characteristics , historical , economic , social and cultural consequences that carry no the same can be applied to all areas . To implement the idea of the need for legislation that comprehensively can accommodate diversity and regional diversity of the Indonesian nation.

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