

## **HOW DEMOCRACY IS ELECTION? REASSESSING ARTICLE 18 (4) OF THE 1945 CONSTITUTION AND ITS IMPLICATION TO THE REGIONAL HEAD ELECTION IN INDONESIA**

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### **Abstract**

This paper aims to reassess the term “elected democratically” in Article 18 (4) of Indonesia’s revised 1945 Constitution which resulted in the competing interpretation over the appropriate method for selecting heads of regional governments in Indonesia. In fact, the flexibility of such a term was challenged and negotiated to formulate an appropriate mechanism to select heads of regional governments. In 2004, the Constitutional Court concluded that the legislative body was the ultimate institution to interpret “elected democratically” so that this institution can opt whether a regional head election or an indirect election to define such a term. While the regional head election was applied, including its dispute settlements over electoral results to the Constitutional Court, this Court considered a different argument. In 2013, the Constitutional Court reinterpreted such an article by highlighting that the regional head election should be exempted from the general election subjected to Article 22E (2) of 1945 Constitution. In 2014, President Yudhoyono’s rejection from his agreement after the enactment of the Selection of Heads of Regional Governments Bill put further juridical contentions in which the President finally revoked the adoption of the regional head voting by the Regional People’s Representative Council or Dewan Perwakilan Rakyat Daerah (DPRD). As a consequence, the regional head election has been re-adopted and this regional election has remained to be expected to improve the performance of local democracy. The introduction of this direct election model at the regional level, however, questions the important role of political parties because the adoption of this election was substantially to answer public distrust against them. In particular,

the debate whether political parties work becomes intense after non-party candidates are allowed to contest to this election.

*Makalah ini bertujuan untuk menilai kembali istilah “terpilih secara demokratis” dalam Pasal 18 (4) dari UUD 1945 Indonesia yang telah diamendemen yang menghasilkan interpretasi yang berbeda dari metode yang tepat untuk memilih kepala pemerintah daerah di Indonesia. Fleksibilitas istilah semacam itu ditantang dan dinegosiasikan untuk merumuskan mekanisme yang tepat untuk memilih kepala pemerintah daerah. Pada tahun 2004, Mahkamah Konstitusi menyimpulkan bahwa badan legislatif adalah lembaga utama untuk menafsirkan “dipilih secara demokratis” sehingga lembaga ini dapat memilih apakah pemilihan kepala daerah atau pemilihan tidak langsung untuk mendefinisikan istilah tersebut. Sementara pemilihan kepala daerah diterapkan, termasuk penyelesaian perselisihannya atas hasil pemilihan ke Mahkamah Konstitusi, Mahkamah ini menganggap argumen yang berbeda. Pada 2013, Mahkamah Konstitusi menafsirkan kembali pasal semacam itu dengan menyoroti bahwa pemilihan kepala daerah harus dikecualikan dari pemilihan umum yang dikenai Pasal 22E (2) UUD 1945. Pada tahun 2014, penolakan Presiden Yudhoyono dari persetujuannya setelah diberlakukannya Seleksi Kepala Pemerintahan Daerah membuat perdebatan lebih lanjut di mana Presiden akhirnya mencabut pengadopsian pemilihan kepala daerah oleh Dewan Perwakilan Rakyat Daerah (Dewan Perwakilan Rakyat Daerah). DPRD). Sebagai konsekuensinya, pemilihan kepala daerah telah diadopsi kembali dan pemilihan daerah ini tetap diharapkan untuk meningkatkan kinerja demokrasi lokal. Namun, pengenalan model pemilihan langsung ini di tingkat daerah memunculkan pertanyaan mengenai peran penting partai-partai politik karena adopsi pemilihan ini secara substansial merespons ketidakpercayaan publik terhadap mereka. Secara kebusus, perdebatan lebih lanjut adalah apakah kerja partai politik menjadi kuat setelah kandidat non-partai diizinkan untuk bertarung dalam pemilihan ini.*

**Keywords:** Democracy, Regional Election, article 18 (4) of the 1945 Constitution, Indonesia.

## **Introduction**

The revision of the 1945 Constitution from 1999 to 2002 has fundamentally changed the constitutional design of Indonesia. Many Indonesian legal scholars argue that the fundamental revision includes

the way to define democracy so that Indonesian democracy no longer adopts a parliament democracy that puts the preference to the People's Consultative Assembly or *Majelis Permusyawaratan Rakyat* (MPR). Rather, the current democracy is subjected to constitutional democracy model,<sup>1</sup> which considers the limitation of the government's powers and the protection of citizen rights,<sup>2</sup> taking individuals as the subject of the constitutional government. This model becomes characterized by liberal democracy that features the rule of law, the protection of human rights, the separation of powers and the elections.<sup>3</sup>

As one of the features of liberal democracy, election plays a significant role to improve Indonesian democracy the Reformation period. In fact, over decades, from Sukarno's guided democracy to Suharto's Pancasila democracy,<sup>4</sup> Indonesian democracy was hijacked by authoritarianism.<sup>5</sup> In the Suharto's regime, for example, the election was just ceremonial because it was largely manipulated by integralism,<sup>6</sup> a postulate which essentially provided to cement Suharto's power. In short, this design heavily put emphasis oligarchic relations between the President and MPR; the position of MPR as the people's sole legitimate institution whose members are Suharto's alliance authorized the President to perform the government without any significant supervision from other institutions.<sup>7</sup> Therefore, in the Reformation

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<sup>1</sup> Zainal Arifin Hoesein, *Judicial Review: Tiga Dekade Pengujian Peraturan Perundangan di Mahkamah Agung* (Jakarta: RajaGrafindo Persada, 2009), p. 52-53. See also, Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Yogyakarta: Sinar Grafika, 2010), p. 56.

<sup>2</sup> Constitutional democracy emerged as a program and political system in the late 19<sup>th</sup> century which wanted to restrain government's powers in a written constitution. Miriam Budiardjo, *Dasar-Dasar Ilmu Politik-Edisi revisi* (Jakarta: Gramedia Pustaka Utama, 2008), p. 107.

<sup>3</sup> Muhammad Bahrul Ulum and Nilna Aliyan Hamida, "Revisiting Liberal Democracy and Asian Values in Contemporary Indonesia", *Constitutional Review*, vol. 4, no. 1 (2018), p. 112.

<sup>4</sup> Angel Rabasa and John Haseman, *The military and democracy in Indonesia: challenges, politics, and power* (Santa Monica: Rand Corporation, 2002), p. 35.

<sup>5</sup> Syed Farid Alatas, *Democracy and Authoritarianism in Indonesia and Malaysia: The Rise of the post-Colonial State* (New York: Springer, 1997), p. 9.

<sup>6</sup> Romain Bertrand, Jean-Louis Briquet and Peter Pels, *The Hidden History of the Secret Ballot* (Bloomington: Indiana University Press, 2006), p. 200.

<sup>7</sup> Muhammad Bahrul Ulum and Nilna Aliyan Hamida, "Revisiting Liberal...", p. 114.

period, the agenda of the constitutional revision did not solely put emphasis to embody liberal constitutionalism by redesigning the structure of state powers so that checks and balances were embodied in the constitution.<sup>8</sup> This agenda also aimed to accommodate public participation that reflected the enjoyment of political rights, including the introduction of a series of elections which was supposed as a means to re-translate Indonesian democracy.

Along with this agenda, Indonesia wanted to ensure the involvement of people to directly plan, regulate, implement the policy, and supervise government's attitudes so that the constitutional revision subsequently adopted a new electoral system outlined in Article 22E of the 1945 Constitution.<sup>9</sup> This article enumerates that the elections in Indonesia comprise the election of the members of the People's Representative Council (DPR), the election of the members of the Council of the Representative of Regions (DPD), the election of the members of the Regional People's Representative Council (DPRD), and the election of the President and Vice President. Finally, the regional head election has been included to the electoral system,<sup>10</sup> and this inclusion emerges the regulatory and academic debates to what extent this regional head election is consistent to the constitutional framework of electoral system and how it is applicable to promote democracy. Among such a legal controversy, the main problem is about the contentious interpretation over the definition of "elected democratically" in Article 18 (4) of the 1945 Constitution.

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<sup>8</sup> Michael W. Dowdle and Michael A. Wilkinson, *Constitutionalism beyond Liberalism* (Cambridge: Cambridge University Press, 2017), p. 1.

<sup>9</sup> Jimly Asshiddiqie, "Partai Politik dan Pemilihan Umum Sebagai Instrumen Demokrasi", *Jurnal Konstitusi*, vol. 3, no. 4 (2006), p. 6.

<sup>10</sup> This term is often called as 'Pemilukada' or the direct regional general election, referring to the selection of heads of regional governments as part of general electoral system subjected to the Constitutional Court's decision No. 72-73/PUU-II/2004 (the judicial review of Act No. 32.2004 on Regional Governments). Before the inclusion to the general electoral system, this term was often referred to a term 'Pilkada' or the direct regional election which indicated the selection of heads of the regional government as the local government system. See Article 24 (5) of Act No. 32/2004. This Act outlines that heads and deputy heads of regional governments are elected as a pair directly by people in respective regional areas. Article 56 (1) of Act No. 32/2004 also outlines heads and deputy heads of regional governments are elected in a pair democratically based on the principle of direct, general, free, confidential, honest, and fair.

This article states, “Governors, Regents (*Bupati*), and Mayors (*Walikota*), respectively as heads of regional governments of the provinces, regencies, and municipalities, shall be elected democratically.” Therefore, the method of selecting heads of regional governments is aimed to opt which more democratic method to be applied in this decentralized system.

This paper aims to reassess the term “elected democratically” in Article 18 (4) of Indonesia’s revised 1945 Constitution which resulted in the competing interpretation over the appropriate method for selecting heads of regional governments in Indonesia. This paper also investigates the implication of such a constitutional provision to apply the regional head election and to what extent the introduction of such a regional head election diminishes the role of political parties, particularly after the introduction of non-party candidacy to the regional head election. The first part of this paper will provide a historical overview of the method to select heads of regional governments in Indonesia. The second part of this paper will examine the regulatory framework of the regional head election and the attitude of the lawmakers to adopt such a method of selection. The third part of his paper will trace the pathway of the regional head election by examining its application and questioning the role of political parties.

## **The Selection of Heads of Regional Governments: A Historical Overview**

In the trajectory of Indonesian politics, the direct election to choose heads of regional governments is a new phenomenon. Indonesia had never introduced such a method of selection until some years after the Reformation era has started to work. Over the years, from 1945 to 1973, heads of regional governments were appointed by the central government.<sup>11</sup> From 1974 to 1998, heads were nominated and elected by the members of the regional parliament before they recommended their results to the Minister of Home Affairs.<sup>12</sup> From 1999 to 2003, heads of regional governments were unilaterally voted by the members of the regional parliaments without any intervention

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<sup>11</sup> Ali Marwan HSB, “Pemilihan Kepala Daerah yang Demokratis Berdasarkan Putusan Mahkamah Konstitusi Nomor 97/PUU-IX/2013”, *Jurnal Legislasi Indonesia*, vol. 13, no. 3 (2018), p. 229.

<sup>12</sup> Article 15 of Law No. 5/1974 on the Basic Regional Government.

from the central government.<sup>13</sup> In 2004, the Regional Governments Act considered the regional head election subjected to the interpretation over “democratically elected” of heads of regional governments in Article 18 (4) of Indonesia’s revised 1945 Constitution.<sup>14</sup>

Such different periods illustrate how local politics and the dominant power of central government work hand-in-hand to seek the political balance under the backdrop of democracy. At the outset, by designing local democracy to meet the central government’s criteria, elections of heads of regional governments in the New Order were largely dominated by the central government. In doing so, this attitude was essentially driven to satisfy the interest of the ruling party. This centralized model was the underlying reason that helps to the establishment of an authoritarianism regime but this argument was often contested to Pancasila Democracy which eminently advocated the spirit of the mutual help (*gotong royong*).<sup>15</sup> This ideology which became characterized by a patrimonial style of government,<sup>16</sup> was claimed by the government as efforts to strengthen the national unity.<sup>17</sup>

As the embodiment of Pancasila Democracy, the Regional Governments Act reserved a significant power granted to the central government to make a final decision after DPRD elected the candidates of heads of regional governments. By reserving power to the central government to make a final decision on the result of elections, the central government often ignored the results of voting made by DPRD. Rather, the central government decided another candidate losing the vote in the DPRD level and of them are particularly prioritized to the members of ABRI (military) and *Golkar* (the ruling party). To be sure, at the grassroots level, this decision resulted in a series of mass protests and questioned the importance of the representation through the regional parliament election and the

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<sup>13</sup> Law No. 22/1999 on the Regional Government.

<sup>14</sup> Article 24 (5) of Law No. 32/2004 on the Regional Government.

<sup>15</sup> Eka Darmaputera, *Pancasila and the Search for Identity and Modernity in Indonesian Society: A Cultural and Ethical Analysis* (Leiden: Brill, 1988), p. 181.

<sup>16</sup> Dirk Tomsa and Andreas Ufen (eds.), *Party Politics in Southeast Asia: Clientelism and Electoral Competition in Indonesia, Thailand and the Philippines*, Routledge contemporary Southeast Asia series 55 (New York: Routledge, 2013), p. 9.

<sup>17</sup> Eka Darmaputera, *Pancasila and the Search for...*, p. 181.

function of Indonesian democracy.<sup>18</sup> This episode created what so-called political ambivalence because the regional parliament subsequently was unable to accommodate and represent regional people's participation and the voting conducted in the regional parliament level which was supposed to consider people's representation eventually became a formality due to the ultimate power handed by the central government. This fact asserts that such a regulation is essentially subjected to the authoritarian regime by accumulating powers in the regional governments according to the interest of Suharto.

Such experiences subsequently reflected how the future electoral model of heads of regional governments was renegotiated to meet democratic values. Therefore, since the demise of the Suharto regime, there have been dramatic efforts to strengthen participation from below. In 1999, the Regional Government Act No. 22/1999 was enacted and this Act introduced a unilateral election by granting regional parliament members as voters. In this new Act, the electoral results made by the regional parliament was no longer recommended to the Ministry of Home Affairs. Article 34 (1) of the 1999 Regional Governments Act outlined that the succession of heads and deputy heads of regional governments was administered by the regional parliament through simultaneous elections. By considering the improvement of the model of the selection, however, problems arising from this method of selection made by the regional parliament was often referred to expensive political costs, and especially the expenditure for money politics. In 2001, for example, a businessman and politician Yopie Batubara admitted money politics was amongst the determinant factor to successfully win this indirect election by exemplified Ridwan Batubara, his brother, who was defeated for electoral office. In short, in Tapanuli Selatan Regency, electoral candidates who wished to win this electoral process were advised to invest a large amount of money up to IDR 2 billion. This amount of money would vary according to the geographical proximity and economic potentials of regional governments.<sup>19</sup> As a result, after the

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<sup>18</sup> Agus Pramusinto, "Otonomi Daerah dan Pemilihan Kepala Daerah", *Jurnal Analisis CSIS*, (2004), p. 236-237.

<sup>19</sup> Vedi Hadiz, *Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective* (Redwood: Stanford University Press, 2010), p. 115.

introduction of this indirect election, the investigation found the practice of money politics involving regional parliaments in a number of towns and regencies.<sup>20</sup> Therefore, some scholars argue that the adoption of such an indirect regional election eventually failed to produce responsive regional governments that understood local needs to encourage a significant development.<sup>21</sup> These episodes affirm that in the early years of the Reformation era the effort to defining democracy at the regional level had become an arduous task to which democratic mechanism can prevent the entanglement of money politics.

In 2004, there was a considerable improvement in the new Regional Governments Act (Act No. 32/2004), the second phase of the reformation of the regional government system. By taking into account a number of problems arising from the first phase, the lawmakers in the second phase tried to redesign to which decentralization and regional governments were defined. In this new Act, the method of selecting heads of regional governments no longer adopted an indirect regional election by the regional parliament as applied before. Rather, this new Act introduced the regional head election to select electoral candidates by involving people as voters. This system was supposed to consider the full participation of people rather than the previous system which consider people's participation through a representative model. However, there was no adequate reason to anticipate the possible money politics that would follow this new model of selection.

In practice, this new model has been the new arena of struggle for candidates to gain people's vote. The struggle has driven candidates to persuade individuals at the grassroots for choosing them using the amount of money so that money politics has massively colored by such a direct regional election. While indirect model by the regional parliament was contaminated by practices of money politics among the regional parliament members, in this regional head election money politics expanded to people at the grassroots and this practice also contributed to vote-buying before electing candidates in the voting poll. Amongst a series of money transactions, there was evidence uncovered in the trial process. For examples, the Constitutional Court

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<sup>20</sup> Vedi Hadiz, *Localising Power...*, p. 124.

<sup>21</sup> Vedi Hadiz, *Localising Power...*, p. 43.

found significant breach against the principles of elections and this breach had met the Constitutional Court's criteria, *inter alia*, structured, systematic, and massive. Eventually, the Court decided a number of decisions beyond the mainstream, for example, by disqualifying a candidate, ordering to recount votes, and commanding the new election.

In 2008, the first time in Indonesia's history, after the transfer of power on disputes over electoral results of heads of regional elections from the Supreme Court to the Constitutional Court,<sup>22</sup> the dispute appeared before the Constitutional Court took a lot of public attention. In the case of *Khofifah-Mudjiono vs the Regional Election Commission (KPU) of East Java*, the Court ruled KPU East Java to conduct re-voting in two districts, Bangkalan and Sampang, as well as a recount in Pamekasan.<sup>23</sup> In this decision, the Court also revoked the decree of the East Java Election Commission No. 30/2008 relating to the recapitulation of the results of the second round of East Java regional elections in three regencies.<sup>24</sup>

In 2010, the Constitutional Court also made further milestones. In the case of *Surunuddin-Muchtar vs KPU South Konawe*, the Court found a piece of evidence in the trial room indicating the breach of the general election principles and these had also met structured, systematic, and massive criteria. Therefore, the Court subsequently

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<sup>22</sup> Dwi Hadya Jayani, "Jejak Sengketa Pilkada di MK: Diskualifikasi Calon hingga Pemilu Ulang", *DataKata.co.id* (June 18, 2019), <https://katadata.co.id/berita/2019/06/18/jejak-sengketa-pilkada-di-mk-diskualifikasi-calon-hingga-pemilu-ulang>, accessed June 20, 2019.

<sup>23</sup> Kompas.com, *MK: Pemilihan dan Penghitungan Ulang Pilkada Jatim* (December 2, 2008), accessed June 2, 2019.

<https://tekno.kompas.com/read/2008/12/02/11571396/mk.pemilihan.dan.penghitungan.ulang.pilkada.jatim>, accessed June 2 2019.

<sup>24</sup> The Decision of the Constitutional Court of the Republic of Indonesia No. 41/PHPU.D-VI/2008, p. 136.

revoked the decree of KPUD South Konawe No. 25/kpts/KPU-KAB.027.433563/V/2010 that won Imran-Sutoharto with 43% of votes; the other candidates are Surunuddin-Mochtar, Rustam-Bambang, and Azhar-Yan who got 36%, 24%, and 2% respectively.<sup>25</sup> As a result, the Court ruled KPUD Konawe Selatan to conduct re-voting in all voting polls. In the subsequent year, the Constitutional Court ruled KPUD South Tangerang to re-calculate the result over the electoral dispute in the city of South Tangerang after a dispute that the Constitutional Court revoked its decree that won Airin-Benyamin,<sup>26</sup> and ruled this electoral commission to conduct re-voting in the region.<sup>27</sup> To be sure, the Constitutional Court's consideration under such the three criteria were inextricable to the practice of money politics.

These facts show that the introduction of such a regional head election has contributed to the spreading of corruptive practices that lowers the idea to accommodate public participation. By scrutinizing such episodes, there was followed by a number of regulatory debates to the extent the regional head election was appropriate to translate the term "elected democratically" as outlined in Article 18 (4) of Indonesia's revised 1945 Constitution. Such adverse impacts in the application of the regional head election were criticized because the full participation of people to select heads of regional government eventually was unable to avoid the prevalent attitude of money transaction. Then, this situation culminated the lawmakers to create new Act on the method of selection of heads of regional governments by reinterpreting the appropriate meaning of "elected democratically". Eventually, the discussion ended with the idea to re-adopt the indirect election represented by regional parliament members as it was applied from 1999 to 2004.<sup>28</sup>

As a result, the Selection of Heads of Regional Governments Bill was enacted (Act. No. 22/2014). This Act readopted an indirect

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<sup>25</sup> The Decision of the Constitutional Court of the Republic of Indonesia No. 22/PHPU.D-VIII/2010, p. 208.

<sup>26</sup> The Decision of the Constitutional Court of the Republic of Indonesia No. 209-210/PHPU.D-VIII/2010, p. 10.

<sup>27</sup> Tempo.co, *MK Perintahkan Pemilu Tangerang Selatan Diulang* (December 11, 2010), <https://nasional.tempo.co/read/298197/mk-perintahkan-pemilu-tangerang-selatan-diulang>, accessed June 2, 2019.

<sup>28</sup> Ali Marwan HSB, "Pemilihan Kepala Daerah...", p. 228

election by regional parliament members. This attitude indicated the lawmakers agreed that the application of the regional head election did not perform better than the indirect election through the parliament representation, even if the previous model showed facts that this model initiated episodes of money politics which remarkably undermined the electoral process and result. Due to unending contentions of the appropriate interpretation over such a term “elected democratically”, this new Act was subsequently challenged by President Yudhoyono. He issued the government regulation in lieu of law or *Peraturan Pemerintah Pengganti Undang-Undang (Perppu)* No. 1/2014 in order to annul such a new Act. Then, he also issued *Perppu* No. 2/2014 to amend related provisions on the indirect election of heads of regional governments by parliament members.<sup>29</sup> In Indonesia, this regulation in lieu of law becomes supposed as a legitimate shortcut whose power is granted to the President. When President subjectively claims there is an exigency, such regulation is permitted to issue, including to issue the regulation in lieu of law that revokes the existing Act made by the legislative body.

### **Article 18 (4) of 1945 Constitution in the Regulatory Framework of the Regional Head Election**

Historically, the idea to include the appointment of heads of regional government in the electoral regime was believed as a means to improve democracy at the regional level. Some scholars argue that the introduction of this new election is vital to transform Indonesian democracy.<sup>30</sup> In particular, by providing people participation to elect their regional leaders, this new election is seen to represent local democracy.<sup>31</sup> This argument can also be referred to the motivation of the lawmakers to accommodate this new election, in which the

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<sup>29</sup> Sabrina Asril, “Batalkan Pilkada Tak Langsung, Presiden SBY Terbitkan 2 Perppu!,” *Kompas.com* (December 2, 2014), <https://translate.google.com/?hl=id#view=home&op=translate&sl=id&tl=en&text=2%20Desember%202014>, accessed June 3, 2019.

<sup>30</sup> M. Lutfi Chakim, “Perubahan Sistem Pemilihan Kepala Daerah dalam Dinamika Pelaksanaan Demokrasi”, *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, vol. 3, no. 1 (2014), p. 114.

<sup>31</sup> Bungasan Hutapea, “Dinamika Hukum Pemilihan Kepala Daerah di Indonesia”, *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 4, no. 1 (2015), p. 3.

definition over “elected democratically” as outlined by Article 18 (4) of Indonesia’s revised 1945 Constitution was to accommodate public participation from regions through the introduction of the direct regional election.<sup>32</sup> In other words, the inclusion of the appointment of heads of regional governments to the electoral regime was supposed as the embodiment of democracy so that this effort was expected to improve democracy and public aspiration from the grassroots. This idea asserts lawmakers’ expectation that the localization of democracy through the regional head election was believed to bring a positive impact to infuse regional participation from below.

On the other hand, this new election may also reflect the resurgence of democratic agenda resulted in the long repression of political rights applied by previous authoritarian regimes. As a consequence, the political repression called for the full enjoyment of political rights and this demand influenced to the extent the regional head election were introduced. Then, this introduction was driven to accommodate possible efforts to redefine individual rights and democratic governance.<sup>33</sup> Therefore, the regional head election can be included in part of Indonesia’s long history in the post-authoritarian regimes to re-define the extent to which democracy is understood and embodied to embrace public participation and good governance.

Apart from such a background, the main task of the lawmakers is how they can provide the appropriate interpretation and translation over the elusive term “elected democratically”. After the application of such two methods of selection of heads of regional governments in the Reformation period, there have been numerous problems that follow and these problems may result in more complex consequences. In this period, such an arduous task is not how to prevent the possible resurgence of the authoritarian model that grants the central power the determinant power to the result of the regional election, as experienced in the Pre-reformation period. Rather, how such an

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<sup>32</sup> Academic Script Draft Law on Regional Government, 2011, p. 39. See also, Meri Yarni, “Penyusunan naskah akademik sesuai ketentuan Undang-Undang Nomor 12 Tahun 2011 dalam proses pembentukan Peraturan Daerah”, *Jurnal Ilmu Hukum Jambi*, vol. 5, no. 1 (2014), p. 11.

<sup>33</sup> Zainal Arifin Hoesein, “Pemilu Kepala Daerah dalam Transisi Demokrasi”, *Jurnal Konstitusi*, vol. 7, no. 6 (2010), p. 5.

interpretation over “elected democratically” will be able to avoid the practice of money politics that substantially erodes and hinders the desire to embody democracy at the grassroots.

In the case of *Yayasan Pusat Reformasi Pemilu vs the State* in 2004, there were important debates over the appropriate interpretation of “elected democratically”.<sup>34</sup> The courtroom revealed that there was a confusion in the constitutional revision to adopt the appropriate method of selection for heads and vice heads of regional governments so that the People’s Consultative Assembly decided to choose the term “elected democratically”.<sup>35</sup> By using this term, this fact indicates there were lacks of parameters during the process of the constitutional revision in formulating the appropriate method of selection. Therefore, the Assembly decided to use the term “elected democratically” and granted the lawmakers to consider the appropriate method of selection. As a country that is relatively new to introduce regional elections, Indonesia has tried two methods of selection for heads regional governments and both methods show democracy has been underrepresented due to the lacks of the regulatory regime to anticipate the possible money politics. Burhanuddin Muhtadi argues that the practice of money politics is inseparable to the political culture in countries that are relatively poor and have low rates of literacy like Indonesia.<sup>36</sup> This practice becomes characterized by the pre-modern form of political and social relations and it is prevalent as part of political style in many third world countries.<sup>37</sup> Thus, the challenge of the lawmakers is to cut off the possible practice of money politics and they should focus on this fact.

In retrospect, President Yudhoyono’s rejection from his agreement after the enactment of the Selection of Heads of Regional Governments Bill in 2014 was the central debate to simplify the electoral process. Instead of re-adopting the indirect head appointment by members of the regional parliament, Yudhoyono

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<sup>34</sup> The Decision of the Constitutional Court of the Republic of Indonesia No. 072-073/PUU-II/2004 at 108-109.

<sup>35</sup> The Decision of the Constitutional Court of the Republic of Indonesia No. 072-073/PUU-II/2004 at 108-109.

<sup>36</sup> Burhanuddin Muhtadi, “Buying Votes in Indonesia: Partisans, Personal Networks, and Winning Margins”, PhD. Dissertation., The Australian National University, 2018, p. 72–73.

<sup>37</sup> Burhanuddin Muhtadi, “Buying Votes in Indonesia...”, p. 74.

offered to keep the regional head election through a simultaneous process. This provision might be inspired by the scheduled general election in 2019 that would be held simultaneously. In the case of *Effendi Gbazaali vs the State* in 2014, the Constitutional Court decided that the general election which would be held in 2019 should be applied simultaneously.<sup>38</sup> This decision was made by considering facts in the courtroom that money politics was inevitable in the electoral process so that elections became expensive because.<sup>39</sup> The establishment of such a simultaneous election, therefore, is supposed as the improvement of Indonesian general election systems. In particular, this alternative was taken by the Constitutional Court as an effort to simplify the electoral process so that it is expected to lower the practice of money politics.

### **Responding the Debate over the Application of the Regional Head Election**

Indeed, elections have a major role as the prerequisite to establish democracy. In post-authoritarian countries like Indonesia, elections become the determinant factor to bring political reform whether the new democratic government will succeed. On the other hand, the introduction of a series of elections like what has been applied in Indonesia, from the central to the regional levels, should be commenced by a question whether the democracy will be easily embodied through the introduction of elections in all levels. It is difficult to measure public aspiration through many numbers of elections, while on the other hand, elections in Indonesia were colored by money transactions and the legal regime did not quietly ready to anticipate such practices. Rather, a number of elections will produce hazardous risks because money politics plays a determinant factor for the triumph of candidates and almost all elections in Indonesia were tarnished by this practice.

The episodes of such numerous political transactions reflect the fact that current Indonesia's political system substantially fails to function political parties. Indeed, in countries adopting liberal

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<sup>38</sup> The Decision of the Constitutional Court of the Republic of Indonesia No. 14/PUU-XI/2013 at 108-109.

<sup>39</sup> The Decision of the Constitutional Court of the Republic of Indonesia No. 14/PUU-XI/2013 at 108-109.

democracy like Indonesia, political parties have a prominent role to bridge the government and the people. By considering the role of political parties that absorb the aspiration of people in the decision making, political parties have a definite function not only in the decision making but also in the process of election.<sup>40</sup> This importance of political parties that play a representative function in the election subsequently questions whether political parties in Indonesia necessarily work. The adoption of the regional head election in the 2004 Regional Governments Act implied that the practice of money politics largely has influenced the attitude of the lawmakers to consider the regional head election because of money politics among members of regional parliaments.<sup>41</sup> Therefore, after the introduction of the regional head election, there was followed by the introduction of non-party candidacy in order to recognize people's aspiration that is not accommodated by political parties.

This situation shows that the main problem is not whether the direct or indirect method of selection. Rather, how political parties can play their role to transmit people's aspiration to the government and how their aspiration is responded by the government in the policy-making. While efforts to build democracy is seen as an arduous task, it does not mean that Indonesia should move back to the system applied in the authoritarian regimes. Indeed, Indonesia is in the process of translation and it challenges how this country seeks the new system that will fit the new democratic values. On the other hand, democracy cannot solely be understood as an election but it should include an efficient way to ensure political parties work and accommodate people's participation in the task of the government so that it results in the reciprocity.

## Conclusion

The introduction of the regional head election brings a new landmark in Indonesia, following its challenges and complexities. Such an introduction considers an attempt to establish the political design in the period of transition from the authoritarian regimes to the

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<sup>40</sup> Jimly Asshiddiqie, "Partai Politik dan Pemilihan...", p. 7.

<sup>41</sup> Janpatar Simamora, "Eksistensi Pemilukada dalam Rangka Mewujudkan Pemerintahan Daerah yang Demokratis", *Mimbar Hukum*, vol. 23, no. 1 (2011), 226.

resurgence of democracy. While the demand for democracy at the local level was one of the ultimate aims in the decentralization regime, the problem which appears is how to formulate the ideal democratic selection of heads of the regional governments. In fact, the Indonesian constitution does not provide the clear definition and the appropriate method of the selection and this ambiguity has remained to exist which results in the on-going competing interpretation over the term “elected democratically”. On the other hand, whether the direct or indirect method of selection has decentralized a number of money politics and it has been a new challenge for Indonesia how to compromise democratic agenda by reducing transactional money as an attempt to win candidates in the regional head election.

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