



RELEVANCE OF THE LAW ON THE ELECTION OF REGIONAL HEADS WITH LAW ABOUT LOCAL GOVERNMENT

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Abstract: *The role of political parties as bearers of the functions of socialization, education, participation, and political recruitment is a very effective medium in triggering the political participation of local people. The existence of a discourse on changing the Regional Head Election system in the Regional Head Election Bill must be formulated in a comprehensive manner. So that the result will make the quality of democracy in Indonesia better, and whether direct elections for governors, regents or mayors will have changes and variations for the better in the future. The main problems in this research are: How is the relevance or suitability of the Draft Law on Regional Head Elections to Law concerning Regional Government. The results of this study conclude that: There is relevance between the Bill on the General Election of Regional Heads and Law concerning Regional Government, namely regarding the principle that regional head elections are carried out democratically based on the principles of direct, general, free, confidential, honest and fair. Suggestions that can be submitted are to the government, to obtain a regional head election system that reflects responsive democratic values, it should be studied in depth in the discussion of the Regional Head Election Bill. To the DPR, it is necessary to more deeply examine the various potentials and practices of informality that may arise accompanying the post-conflict local election.*

Keywords: *Relevance, General Election, and Local Government.*

I. INTRODUCTION

Regional head elections are elections for governors and elections for regents or mayors which are a means of implementing people's sovereignty in provinces and in regencies or cities to elect governors and regents or mayors based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Regional head elections are one of the instruments to fulfill political decentralization where it is possible to transfer the focus of power from the center to the regions. The Election of Regional Heads, like national elections, are a means to elect and replace governments in a peaceful and orderly manner. Through local elections, the people will directly elect their leaders in the regions as well as provide legitimacy to those who are entitled and able to govern. The political decision to hold elections is a strategic step in the context of expanding, deepening and improving the quality of democracy. This is in line with the spirit of autonomy, namely the recognition of the aspirations and initiatives of local (regional) communities to determine their own destiny. The

election of regional heads is the implementation of a regional government system to strengthen regional autonomy in increasing public participation in regional government, both from representatives of political parties and non-political parties.

In Law Number 23 of 2014 concerning Regional Government, it is regulated regarding the election of regional heads and deputy regional heads who are directly elected by the people proposed by political parties and coalitions of political parties. Based on legal and political developments to realize a more effective and accountable local government administration according to the aspirations of the community, it is necessary to make changes to provide opportunities for individual candidates to increase community participation. The Government through the Ministry of Home Affairs of the Republic of Indonesia submits a draft of the Regional Head Election Bill, hereinafter referred to as the Regional Head Election Bill. The discussion of the Regional Head Election Bill must be formulated in a comprehensive manner, so that the results will improve the quality of democracy in Indonesia. And whether the election is conducted directly at the level of governor, regent/mayor or will there be changes and other variations for the better in the future.

Based on the description above, the writer is interested in knowing the relevance of the draft Law concerning the General Election of Regional Heads that has been compiled and proposed to Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government, while the main problems in the research are: This is about the relevance or conformity of the draft Law on the General Election of Regional Heads to Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government. The scope of the study of state administrative law, especially public policy law, is the focus of this study. The purpose of writing is to describe, understand, and analyze the relevance of the Draft Law on Regional Head Elections to Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government. The research method uses a normative juridical approach by means of library research (library research) and an empirical juridical approach, while the research strategy uses an applied normative approach (applied normative law) and uses sources and types of data related to the object of research which then analyzes the data through qualitative analysis.

II. DISCUSSION

The election of regional heads as a form of democracy and a mechanism for the rotation of power in Indonesia, has been going on since the old order era until now. In its development, regional head elections which used to be in the form of appointments turned into elections in a certain sense in the New Order era and direct elections in the post-reform era until now. In Law Number 23 of 2014 concerning Regional Government which has become the basis for the implementation of election of regional heads so far, there are still several criticisms, including: First: with the inclusion of regulations regarding The Election

of Regional Heads in the Regional Government Law, the The Election of Regional Heads is considered part of regional government affairs. Whereas in Law concerning General Elections, The Election of Regional Heads is stated as part of the General Election itself. Second, in Law Number 23 of 2014 it is regulated about the existence of Deputy Regional Heads in the The Election of Regional Heads. Whereas the constitutional basis regarding The Election of Regional Heads in Article 18 paragraph (4) of the 1945 Constitution only states that there will be democratic elections for governors, regents and mayors. The position of deputy regional head in this constitution is not stated. The third issue which is quite urgent in Law Number 23 of 2014 which contains the The Election of Regional Heads is that the complaint mechanism for the parties, including the public, is not regulated regarding the many KPUD decisions related to the The Election of Regional Heads. In this context, KPUD can become a superbody institution. Fourth: Law Number 23 of 2014 does not regulate in detail the procedural law for the settlement of The Election of Regional Heads disputes.

There are several provisions in the articles that can be reviewed to determine the relevance or conformity between the Draft Law on Regional Head Elections and Law Number 9 of 2015 concerning Regional Government. These provisions include: First, Article 56 Paragraph (1) of Law Number 9 of 2015 concerning Regional Government states that "Regional Heads and Deputy Regional Heads are elected in one pair of candidates which is carried out democratically based on direct, general, free principles. , confidential, honest and fair". Whereas in Article 1 of the Draft Law on Regional Head Elections it is stated that "Governors are elected by the Provincial DPRD democratically based on the principles of being free, confidential, honest and fair". The election of the Regent/Mayor is contained in Article 42 which states that; "The election of the Regent/Mayor is carried out democratically based on the principles of direct, general, free, confidential, honest and fair."

In every drafting of laws and regulations in Indonesia, including laws, it is appropriate to refer to the constitutional provisions. This is because the constitution is the highest law in a country. This is where the constitutional principle must be a reference for every legal product making. According to M. Rifqinazamy Karyasuda that: "Disobedience to this principle will result in two things. In principle, this will result in the emergence of various unconstitutional legal products. As a result, there will be a disintegration of national law. Another thing that will arise in the practical realm is the birth of useless legislative products, as a result of being canceled by certain judicial decisions (in the context of the law being canceled by the Constitutional Court) through judicial review. The cancellation of legal products results in the neglect of the principle of efficiency in the making of these laws and regulations."

In the context of the Draft Law on the Election of Regional Heads, the constitutional rules governing the The Election of Regional Heads in Article 18 Paragraph (4) of the 1945 Constitution as previously mentioned must be used as a reference. The article gives a message that the The Election of Regional Heads must be carried out

democratically. The democratic interpretation in the 1945 Constitution must be interpreted as democratizing the general election process. The The Election of Regional Heads process which starts from the selection of candidates, nominations, campaigns, elections, determinations, disputes (if they occur), even up to impeachment must be carried out democratically.

This Draft Law on Regional Head Elections, as well as the law governing the previous The Election of Regional Heads, focuses more on nominations, campaigns, elections, and disputes. The other stages do not seem to have received good attention. It would be ideal if other stages were also regulated in sufficient detail and referred to democratic values as mandated by the constitution. Apart from emphasizing on the principle of constitutionality and democratization of regional elections, the next important thing to note is the strengthening of the principle of autonomy in the political field. Article 18 Paragraph (4) of the 1945 Constitution affirms: "Regional governments exercise the widest possible autonomy, except for government affairs which are determined by law as affairs of the Central Government".

Implicitly the regulation on regional autonomy implies that autonomy in the political field is also one of the regional authorities that are autonomous. This should be the juridical and other philosophical basis in the making of this bill. The realization of regional autonomy in the political field can be carried out more fully by issuing regulations regarding regional elections that are truly sovereign in the regions. One of the adequate formulations to be put forward is to make The Election of Regional Heads a fully regional job, apart from various central interventions in various aspects such as nomination, implementation and others.

The meaning of direct election is at least an effective answer to a number of cases attached to the election with a representative system (indirect democracy), namely suppressing the "cow trade" culture, reducing money politics, changing orientation from elitist to populist, as well as enriching the recruitment base. the leaders. The main thing with directly electing regents/mayors is that people's sovereignty is no longer symbolic. The previous regional head's choice was that the DPRD was on behalf of the people holding people's sovereignty in their territory, but all of this was only symbolic. Symbolic, in reality there is almost no relationship between the DPRD and the people who represent it, which is getting worse in the representative era system. Even though this is an era that should increasingly require the greatness of the party elite to get closer to the hearts and minds of its constituents.

The state of Indonesia is a state of law, not a state of power (*machtaat*). These are items that are used as basic benchmarks in the process of administering government, both in the executive, legislative, and judicial circles. In terms of the formation of laws and regulations, this country does not necessarily make laws and regulations at will in accordance with the ambitions of its interests, but must be based on the principles of legal norms that have been legally established. Therefore, various laws and regulations that are made must be based on the ideal

concept of the formation of laws and regulations, in particular Law Number 10 of 2004 which has been revised into Law Number 12 of 2011 concerning the Establishment of Legislations.

Specifically in the Law concerning the Formation of Legislations, it is explained about the principles for the formation of Legislations. The principle of law is the main pillar for the formation of laws. According to Satjipo Rahardjo, that the principle of law can be interpreted as something that is considered by the legal community concerned as basic truth or basic truth. This is because it is through legal principles that the ethical and social considerations of the community enter the law. Thus, this legal principle becomes a kind of main source for living the legal system with ethical, moral and social values of society. The importance of a legal principle, stated by JH. Niewenhuis, who said that legal principles form a system of checks and balances. Legal principles often go in the opposite direction, but in the case that legal regulations are prohibitions, it is actually a lesson for legal principles (going in opposite directions), then they control each other thereby maintaining balance. The thing to note about the legal principle is that the legal principle in the formation of a law does not only affect a positive Indonesian legal system, but the legal principle will even create a system in national law. Thus it can be said that without legal principles, it is impossible to create a legal system.

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III. CONCLUSION

The conclusion from the description above is that there are problems related to the dualism of the position of the Governor as the representative of the central government in the regions and as the head of government in the regions, and to resolve these problems, a solution is needed by changing the governor election system. Related to this, the author assesses that the problems and solutions offered are out of sync or disconnected. The question then is whether the solution to changing the governor election system from a direct to a representative system can answer the problems above? The author considers that the problems above are not automatically resolved by changing the mechanism for selecting the Governor. Governors who are elected by DPRD do not automatically feel like representatives of the central government in the regions, even if there is a tendency from previous experience, governors who are elected by the Provincial DPRD actually feel like representatives of the political parties that carried them during the election. The hope is to strengthen the position of the Governor, the Governor of the provincial DPRD election results in fact strengthens the rivalry between the governor and the central government when the parties that support him are elected in the DPRD from non-government (opposition) parties at the Parliament level.

The government also assumes that governance issues in the regions can be resolved by changing the governor election system. In other words, the government argues that governance issues in the regions originate from the governor election system. The issue of governance in the regions related to the regulation of regional autonomy, of course, does not originate from the governor election system. The source of governance problems in the regions is the unclear position of the Governor in relation to the role of the Governor as the representative of the central government in the regions. The solution in this regard was to restructure the structure and authority of the regional government through the revision of the Regional Government Law, which happened to be being

discussed by the DPR at that time. In addition to the above, the Government argues that the election of governor by the provincial DPRD can reduce the high political costs that have occurred so far in direct elections. In direct gubernatorial elections, a candidate for governor must spend a large amount of money, which is between 30 and 50 billion rupiah, depending on the geographical location of the area and the number of voters in the area. With the election system by the Provincial DPRD (representation system), this fantastic number can be suppressed. The question then is whether this assumption is correct? If the context is state money used to organize the The Election of Regional Heads, it is clear that significantly the funds used are not as large as direct elections. But if the context is the political costs incurred by the gubernatorial candidate, the aim of reducing political costs will not change significantly.

The The Election of Regional Heads Bill has actually anticipated money politics in the governor's election by members of the Provincial DPRD. Article 30 of the The Election of Regional Heads Bill states that if a candidate for governor feels aggrieved or has preliminary evidence of political allegations that occurred before, during, and after the election, the person concerned can file an objection to the Supreme Court and if the decision on the objection is proven, then the Supreme Court can cancel the election results and members of the provincial DPRD who are proven to have committed or participated in money politics may be subject to sanctions of dismissal as members of the Provincial DPRD without eliminating their criminal acts.

The question then is how effective the very severe sanctions can suppress or even eliminate the potential for money politics in the election of governors by the DPRD? If we look back, it is common knowledge that there was a process of "buying and selling" vote support when the governor election system was still in effect by the Provincial DPRD. Even in direct elections, "buying and selling" of political party support is also suspected. This means that the governor election system through a representative system or a direct system does not guarantee 100% clean or no money politics. The high political costs in the direct election of governors can actually be reduced through simultaneous regional elections, namely equating the timing of the stages of regional elections between the election of governors and regents/mayors. This mechanism has been included in the The Election of Regional Heads Bill, namely the election of regional heads, both governors, regents/mayors in the same year so that they are carried out simultaneously.

Anticipation of high political costs can also be anticipated through setting the source of funds used by candidates. So far, funds used by regional head candidates can officially be seen in bank accounts registered with election administrators. In the account, a list of the cash flow of the use of funds by a candidate is seen. The problem then is whether it can be ascertained that all funds used by the candidate only enter and leave the one registered account number. One way to anticipate high political costs can be done through clear arrangements regarding the funds used by candidates and must be accompanied by strict sanctions. The argument of

high political costs causes the tendency of elected regional heads to behave corruptly, with the assumption that returning the funds spent is true. However, this problem should not then lead to a system that is actually counter-productive to the goals of democracy itself. Not to mention the issue of the legitimacy of the Governor who is elected by the Provincial DPRD psychologically does not have a direct emotional relationship with the community. Candidates for governor who will compete do not have a strong motivation to build communication and direct relationships with the community. For future governor candidates, it is more important to build relationships with the provincial DPRD than the community. The legitimacy of the governors elected by the DPRD is also lower than the governors who are directly elected.

The election of the governor elected by the provincial DPRD also causes the delivery of the vision, mission, and program by the candidate for governor in the plenary session of the DPRD to have no effect on his electability. Whereas our democracy is headed for how the people have leaders because of the program. Political debate is no longer in the realm of liking or disliking a candidate, but heading towards debates and contesting programs that provide answers to problems that exist in society. In addition, the governor-elect feels that if he is successful, it is because of the absolute role of DPRD members, not because of the role of the community. The consequence of this is that the responsibility of the governor which is translated into development programs is more inclined to the interests of the electorate (DPRD members) rather than the interests of the community itself. And if drawn on a theoretical level, then the election of the Governor by the DPRD can re-bias the system of checks and balances at the local government level.

According to Wein Arifin, the proposed change to the governor's election system actually stems from the problem of the relationship or division of authority between the center and the regions. Basically, this is an effort to find harmony in the use of state government power in a territorial manner. In this regard, a more appropriate solution to take is to address the root of the problem through targeted regulatory changes. Based on the description above, it can be analyzed that there is a relevance between the Draft Law on Regional Head Elections and Law Number 9 of 2015 concerning the second amendment to Law Number 23 of 2014 concerning Regional Government, namely regarding the principle of regional head elections being carried out in a systematic manner. democracy based on the principle of "direct, public, free, confidential, honest, and fair". It's just that the election system in the Draft Law concerning regional head elections is distinguished between the election of the Governor using representative elections by the Provincial DPRD, and the election of the Regent/Mayor using the election system carried out democratically based on the principles of direct, general, free, secret, honest, and fair".

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