

## The Impact of Changes in the Election Law on Regional Head Elections in Indonesia

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### *Abstract*

*The amendment to the Regional Head Election Law represents a further step towards reforming the national political system, improving the quality of local democracy, and demanding efficiency in the implementation of regional head elections. This article analyzes the impact of regulatory changes on the implementation of regional head elections in Indonesia. The research method uses normative juridical methods with a comparison of laws and regulations, analysis of official documents, and a review of scientific literature. The results show that year after year, the changes in the law strengthen the institutional system, clarify the mechanism for nominating regional heads, and improve the quality of regional head election standards. It cannot be denied that negative impacts on the implementation of regional head elections from year to year include increased political costs, horizontal conflicts, and challenges in maintaining the neutrality of the state bureaucracy. This article explains the importance of continuous reform in regional head election regulations so that they run according to the principles of transparent, accountable, and integrated democracy.*

**Keywords:** *Regional Head Election Law, Changes To Laws, Local Democracy.*

## INTRODUCTION

The Constitution is the basic foundation grade in the main constitutional beginning of the implementation of regional government and the election of regional heads contained in the 1945 Constitution of the Republic of Indonesia in the 1945 Constitution. Article 18 paragraph 4 of the 1945 Constitution states that regional heads are elected democratically. In principle, this regional head election is in line with the principles of direct, free, honest, secret, general, and fair elections. The people are the holders of the highest sovereignty, realizing a sovereign people's government, commonly called a democratic state. The nomenclature of democracy comes from two Greek words: demos and cratein. Demos means people, cratein means government. Article 1 paragraph 2 of the 1945 Constitution states : Sovereignty is in the hands of the people and is implemented according to Regional Law. People's sovereignty realizes a sovereign people's government or a democratic state. The people should consciously internalize their position as holders of sovereignty, as stated in the articles of the constitution, especially

Article 1 paragraph 2 of the 1945 Constitution. The people, the citizens, must consciously behave in accordance with the rules of the constitution in their social and state lives. With this constitutionally conscious attitude, the people know their basic rights and human rights as holders of sovereignty, their rights and obligations as citizens, and know and internalize the implementation of government built on the basis of sovereign people's government. All of this is contained and can be known in the Constitution. Consciousness of *bewustzijn* leads a person to internalize something in their behavior. Consciousness brings appreciation in implementation.

Article 1 paragraph 2 of the 1945 Constitution contains two essential meanings. The phrase "sovereignty rests with the people" acknowledges the existence of a sovereign people's government or democratic state, and the phrase "executed according to the Constitution" embodies the principle of constitutionalism. The people, in exercising their sovereignty, are bound and obedient to the rules of the constitution. Sovereignty vested in the people cannot be exercised in a manner contrary to the constitution. The use of unconstitutional measures is not permitted. Popular sovereignty does not justify the rule of the mob. The 1945 Constitution regulates the limitation of power, based on the distribution of power. Power should not be concentrated in one hand. The essence of constitutionalism is indeed aimed at limiting state power. According to William G. Andrews, the concept of constitutionalism means limited government. It is said that under constitutionalism, two types of limitations impinge on government. Power is proscribed and procedures are prescribed. The people divide power downwards, according to the Constitution, through general elections in Article 6 A paragraph 1 and Article 22 E of the 1945 Constitution and on the basis of mandate. All power in the State is derived from the sovereign power of the people, on behalf of the people. Here is the essence of the existence of a sovereign people's state, or democratic people.

Article 18 paragraph 4 of the 1945 Constitution of the Republic of Indonesia stipulates that regional heads are elected democratically. The term "democratically elected" means that regional head elections can be conducted directly or indirectly, as long as they are conducted democratically. Although direct elections are not the only instrument of democracy, they are very important in maintaining people's sovereignty. This is because direct elections position the people as the primary holders of primary sovereignty, so that with direct elections a country is seen as having a democratic political system. The people are in power, or government by the people. According to Bhenyamin Hoessein, the word "democratic" in Article 18 paragraph 4 of the 1945 Constitution of the Republic of Indonesia cannot be interpreted as elections through a specific mechanism, but rather emphasizes a mechanism for regional head elections that is in accordance with the aspirations of the people and free from money politics. 4 Over time, the meaning of "democratic election" in the Constitution has shifted and been updated over time, indicating the development of the legal politics of regional head elections in Indonesia.

Regional head elections have been conducted directly and simultaneously since the enactment of Law Number 1 of 1955 on Regional Elections, the regulations of which have subsequently been continuously refined. Simultaneous regional head elections were chosen for two reasons: political stability and cost efficiency. The methods considered best to be used to achieve these goals, the time and method of the law being amended, and whether a standard and established pattern can be formulated to assist in deciding the process of selecting

objectives and the methods to achieve these goals effectively. Therefore, the legal policy of regional head elections in Indonesia must be chosen by taking into account societal developments and carried out in order to achieve the legal ideals of the Indonesian nation. Therefore, the author feels the need to conduct a review of the legal policy of direct and simultaneous regional head elections. The main problems to be answered in this study are the dynamics of the legal politics of regional head elections in Indonesia, and how to analyze the legal politics of direct and simultaneous regional head elections, as well as the challenges and prospects for their renewal. This study uses a normative research method, namely legal research that uses the internal perspective of legal science to the object of research in the form of legal norms. The analytical technique used in this study is descriptive-analytical. The data used in this study is secondary legal data, such as books, scientific journals, and other related papers or articles. The data collection technique used is library research, which involves searching for relevant legal materials.

## **METHOD RESEARCH**

This research method uses the Statue Approach, which analyzes changes to the Regional Head Election Law, Constitutional Court Decrees, and General Election Commission Regulations. This is followed by the Comparative Approach method, which compares old and new provisions, and the Conceptual Approach methodology, which examines the concept of organizing regional head elections. The data used are laws and regulations, official reports from the General Election Commission, and the General Election Supervisory Body, and additional scientific articles.

## **DISCUSSION**

### **1. Changes to the Regional Head Election Law**

At present, changes have taken place several times from year to year, including important changes in the rules and regulations for regional head elections, accountability of the national simultaneous regional head election schedule, minimizing the frequency of regional head elections that were previously interrupted. All improvements and nomination mechanisms from tightening the requirements for individual candidates and strengthening the role of political parties, strengthening the implementation of the general election commission and the general election supervisory body, through policies to expand authority and consolidate technical regulations. Confirmation of sanctions that can disqualify candidate pairs such as money politics sanctions, as well as the cancellation of candidate pairs before the determination. Regulations for regional head elections in special conditions such as national natural disasters and national health emergencies. Judging from the time interval for changes in the laws and regulations for regional head elections from the post-New Order era to the reform era, the regulations for regional head elections have undergone several changes, the initial important stage of which is Law Number 32 of 2004.

Concerning Regional Government, which stipulates that the head and deputy head of the region are elected democratically and the candidate pairs for regional heads are the foundation for the direct regional head election system. Then Government Regulation Number 6 of 2005. And amendments to Central Regulation Number 17 of 2005. Which regulates in more detail the mechanism of selection, ratification, inauguration and filling of positions in the event of a vacancy. While Law Number 22 of 2007. Concerning the implementation of general elections which includes regional head elections in the general election regime which means that regional head elections are regulated as part of the national general election system.

Then Law Number 1 of 2014 concerning the election of regional heads of Governors, Regents and Mayors, became an amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 into Law, continued to the amendment to Law Number 10 of 2016 on the amendment to Law Number 1 of 2015. This law in general and formally becomes the main basis for the implementation of regional head elections which regulates candidate requirements, public campaigns, leave of incumbent officials, inauguration, and the arrangement of technical regulations for the implementation of regional head elections.

The government then issued Regulation in Lieu of Law Number 2 of 2020, which was then ratified as Law Number 6 of 2020. The role of opportunity in this law is adaptive in national emergency situations, such as the extraordinary situation that occurred in 2020, which affected the world and affected Indonesia. Therefore, the regulation of the regional head election system in Indonesia refers to the 1945 Constitution. And it has been drafted as a regulatory law to ensure the implementation of regional head elections that are democratic, accountable, legal, and in accordance with legal principles in Indonesia.

## **2. General Framework for Changes to Regional Head Election Regulations**

This discussion focuses on changes to the Regional Head Election Law in the 2014-2020 period, which shows the dynamic political dynamics and all the needs for adjustments to the regional head election system to political developments, state administration, and social developments, the regulations that are the focus of this discussion are:

- a. Law Number 1 of 2014 concerning the election of regional heads (Governors, Regents, and Mayors). Regarding the appointment of regional heads and deputy heads who are elected democratically.
- b. Law Number 1 of 2015, which establishes central regulations to improve the regional head election mechanism, was issued. The government replaced the law due to

widespread rejection of the indirect regional head election mechanism through the Regional People's Representative Council (DPRD). It reaffirmed Law Number 1 of 2015, which stipulates that regional head elections must be conducted directly by the people.

- c. Law Number 8 of 2015 and Law Number 10 of 2016 concerning the technical mechanisms for regional head elections, where the current law formally forms the basis for the implementation of regional head elections, which regulates various aspects of candidate requirements, campaigns, incumbent leave, inauguration and other technical regulations.
- d. Government Regulation in Lieu of Law Number 2 of 2020 and ratification of Law Number 6 of 2020 where this regulation was issued on the basis of a national health emergency, namely covid 19 after 2020 there were many significant changes in the legal system governing regional head elections in Indonesia where Law Number 2 before Number 6 of 2020 stipulated crucial changes to regional head elections amidst the world pandemic covid 19 which resulted in the postponement of the voting schedule, the technical implementation of the election followed health protocol regulations, then this law was integrated as an adjustment to technical changes in the continuity of the implementation of the 2024 national simultaneous regional head elections.
- e. Constitutional Court Decision In addition to formal legal changes, several constitutional court decisions may also have an impact on the regulation of regional head elections. Among other things, the term of office of regional heads resulting from the 2020 regional head elections, the constitutional court ruled that regional heads resulting from the 2020 elections will serve until the inauguration of the continuity of government and the holding of simultaneous national regional head elections in 2024, to ensure the continuity of the running of government and the holding of simultaneous regional head elections according to the schedule set out in Law Number 10 of 2016 Article 201 Paragraph 8. Separation of national general elections and regional head elections where the constitutional court also issued a decision mandating that the national general elections for president and vice president, the people's representative council, the regional representative council and the election of regional heads of governors, regents, mayors, regional people's

representative councils. Provinces, districts and cities will be held separately starting in 2029.

- f. General Election Commission Regulations and Technical Guidelines for Implementation.

### **3. Analysis of Changes to the Regional Head Election Law**

#### a. Law Number 1 of 2014

This law regulates the indirect election of regional heads by regional representative councils and this policy has caused debate because it is considered to reduce the sovereignty of the people.

Positive impact:

- a) Strengthening the position of regional representative councils in the regional government system
- b) The budget for regional head elections is more efficient than direct elections.

Negative impact:

- a) Not involving the people directly in regional head elections
- b) The bad potential of political transactions of favors for members of the regional representative council.

#### b. Law Number 1 of 2015

This law was issued to revise the previous law in which regional heads were elected directly by the people.

Positive impact is Creating democracy and democratic participation in the people

Negative impact:

- a) Requires a large budget
- b) Creating horizontal conflict among local communities.

#### c. Law Number 8 of 2015 and Law Number 10 of 2016

This law regulates and strengthens the rules for simultaneous regional head elections regarding requirements, nominations, regional head election disputes and verification.

Positive impact:

- a) Harmonization of the implementation of simultaneous regional head elections nationally
- b) Longer state budget efficiency.

Negative impact:

- a) Making regional head elections more busy and technical

- b) More numerous and complex disputes due to numerous and tight contestations
- d. Central Regulation in Lieu of Law Number 2 of 2020 and Law Number 6 of 2020 The changes and stipulation of this law are adjusted to the 2020 global COVID-19 pandemic and serve as the basis for determining preparations for the continuation of the simultaneous regional head elections in 2024.

Positive impact:

- a) Providing legal certainty regarding the rescheduling of regional head elections
- b) Setting health protocol standards during 2020 regarding campaigns, election locations and voting.
- c) Maintaining the continuity of regional head elections in health emergency conditions.

Negative impact:

- a) Decreasing democratic participation due to the pandemic
- b) Increase the budget costs for holding regional head elections
- c) Declining number of voters
- d) Giving rise to non-transparent protocol rules due to the Covid-19 outbreak.

#### **4. The Role and Impact of the Implementing Regulations of the Regional Head Election Commission**

The regulations for the implementation and administration of the regional head general election commission issued by the general election commission function as important technical instruments, namely:

- a. Implementing regulations of the general election commission concerning the technical stages of regional head elections
- b. Implementing regulations of the regional head election commission in the nomination of regional heads and deputy regional heads
- c. Regional head election commission regulations regarding campaigning
- d. Regulations of the regional head general election commission regarding the technical themes of voting and vote counting
- e. Regulation of the regional head election commission regarding the recapitulation of the results of the regional head election ballots

<b>Year</b>	<b>Province</b>	<b>Regency</b>	<b>City</b>	<b>Total</b>	<b>Information</b>
2014	Fast forward to 2013	Fast forward to 2013	Fast forward to 2013	-	-
215	9	224	36	269	Implemented
2017	7	76	18	101	Implemented
2018	17	115	39	171	Implemented
2020	9	224	37	270	Implemented
2024	37	93	415	545	Implemented

\*Table of Participation in Regional Head Elections in Indonesia Statistics on the number of regional head election districts from 2014 until 2024.

**Positive Impact of Changes to the Law on Regional Head Elections:**

- a) Budget efficiency and holding simultaneous regional head elections at provincial, district and city levels, including holding them in the same year and in the same period, saves state budget costs.
- b) Strengthening the institutional framework of the general election commission which has the task and authority to determine the stages throughout the territory of the Republic of Indonesia and the general election supervisory body has a wider reach in preventing and taking action against violations in each region, the professionalism formed by this change can easily identify and identify indications of violations in the regional head elections.
- c) Increased professionalism in the implementation of duties with transparency, accuracy, and the same tempo so that audits are easy and clear.

**Negative Impact of Changes to the Law on Regional Head Elections:**

- a) High political costs due to the high costs of massive political campaigns mean that political dowries will remain a national problem, especially in regional head election contests.
- b) The horizontal political contrast in technical changes to regulations will create polarization in society due to the contestation of each party's jargon.
- c) The bureaucratic neutrality that occurs will become increasingly illusory and under the table so that practical politics will divide the bureaucracy because of the influence on who will lead.

- d) The failure to implement government programs that have been built by the previously elected regional heads and deputy heads has resulted in waste and ineffectiveness in the running of government. Existing programs have only become discourse or raw materials that are not continued, and local areas will be left behind.

### **Conclusion**

Changes to the law on general elections for regional heads, governors, district heads and mayors. Will bring impacts where the good and bad can be clearly felt nationally, there needs to be a new breakthrough in the implementation of better regional head elections because there are still wide gaps in the implementation of elected government. The ineffectiveness of government programs that have been built by the previously elected regional heads and deputy heads so that it makes waste and ineffectiveness of the government, existing programs only become discourse or raw materials that are not continued, local areas will be left behind and development programs will not be continued. The latest breakthrough is that the latest fifth amendment can regulate regional head elections that focus more on regional development rather than for contestation of power validation, such as governors who are elected by the people with selection by the regional people's representative council, while regents and mayors are selected by the governor selectively so that government programs from upstream to downstream can be implemented well.

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