

A MECHANISM FOR FILLING REGIONAL HEADS POSITIONS IN A DEMOCRATIC MANNER ACCORDING TO PANCASILA DEMOCRACY'S PRINCIPLE AFTER THE 1945 CONSTITUTION AMENDMENTS

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Abstrak: Tujuan dari penelitian ini yaitu untuk mengetahui bagaimana mekanisme pengisian posisi kepala daerah secara demokrasi menurut prinsip demokrasi pancasila setelah amandemen UUD 1945. Metode penelitian yang digunakan dalam penelitian ini yaitu menggunakan metode normative dengan Pendekatan normatif meliputi asas hukum, sistem hukum, sinkronisasi hukum, dan sejarah hukum. Hasil dari penelitian menunjukkan bahwa adanya perbedaan dengan Sistem Pilkada Langsung yang berlangsung pada tahun 2005 dengan metode pemilihan umum yang demokratis berdasarkan prinsip langsung, umum, bebas, rahasia, jujur dan adil, namun ditemukan bahwa sistem ini dapat melemahkan posisi DPRD dan menyebabkan politik yang lebih besar. Dapat dipahami bahwa mekanisme pengisian jabatan Kepala Daerah mengikuti kondisi kebutuhan masyarakat di suatu daerah dan perlu diperhatikan bahwa konstitusi yang diterapkan pada setiap periode mempengaruhi karakter undang-undang yang melaksanakan dan mengatur pemerintahan daerah yang berlandaskan Pancasila. Kerangka dari gagasan Demokrasi Pancasila, berarti bahwa demokrasi bukanlah tiruan dari demokrasi liberal atau lainnya, tetapi lahir secara alami dari nilai-nilai luhur budaya dan suku bangsa Indonesia itu sendiri, dan ditandai dengan sistem organisasi negara yang dijalankan. Baik sistem Pilkada secara langsung maupun tidak langsung tetap sesuai dengan nilai-nilai Demokrasi Pancasila, karena Pancasila sendiri merupakan ideologi terbuka yang artinya hanya mengatur hal-hal yang pokok saja sedangkan pelaksanaannya disesuaikan dengan kondisi sosial politik yang ada.

Kata Kunci: Kepala Daerah, Demokrasi Pancasila, Amandemen

Abstract: The purpose of this study is to find out how the mechanism for filling the position of regional head in a democratic manner according to the principles of Pancasila democracy after the amendment of the 1945 Constitution. The research method used in this research is using a normative method with a normative approach covering legal principles, legal systems, legal synchronization, and history. law. The results of the study indicate that there is a difference with the Direct Pilkada System which took place in 2005 with a democratic general election method based on the principles of direct, general, free, secret, honest and fair, but it was found that this system can determine the position of the DPRD and cause political the greater one. It can be understood that filling the position of Regional Head follows the conditions of the needs of the community in an area and it should be noted that the constitution applied in each period has the character of the law that implements and regulates regional government based on Pancasila. From the idea of Pancasila Democracy, it means that democracy originates from liberal democracy or others, but is born naturally from the noble values of Indonesian culture and ethnicity itself, and is characterized by the state system that is run. Both the direct and indirect Pilkada system remain in accordance with the values of Pancasila Democracy, because Pancasila itself is an open ideology which means that it only regulates basic matters while its implementation is adjusted to the existing socio-political conditions.

Keywords: Regional Head, Pancasila Democracy, Amendment

INTRODUCTION

In this process, the replacement of regional heads is seen as a measuring tool for democracy implementation in a country, proved by the attitudes and actions of the community to determine their political participation in shaping attitudes and actions in selecting leaders.¹ Thus, it can be assumed that the election will unite people's interest

and their elected representatives.² Elections, a source of legitimate politics in democracy, expected to be a transparent and fair process in relation to political participation, a process based on people's will.³

¹ Samuel P Huntington and Joan M Nelson, 'No Easy Choice, Political Participation in Developing Countries', *Cambridge, Mass: Harvard University Press*, 1977, 3.

² Ryass Rasyid Saukani HR, Affan Gaffar, *Regional Autonomy in a Unitary Stat*, Pustakaka Pelajar, 2002.

³ JL Mansbridge, J., Bohman, J., Chambers, S., Estlund, D., Føllesdal, A., Fung, A., ... & Martí, 'The Place of Self-Interest and the Role of Power in Deliberative Democracy', *Journal of Political Philosophy*, 18 (1). (2010), 64-100.

In general, democracy believes that the more people involved in participating elections, the better off.⁴ The high level of community participation shows that the community understands the challenges of implementing government and is willing to participate in these activities.⁵ On the other hand, a low level of participation is generally considered unfavorable, this is because many people do not care and pay attention to government issues, which means that leaders will be worried about their legitimacy if there is not much participation from their people, even in the future they are questioned about their validity.⁶

One form of citizen participation reflected in the general process for regional head elections is related to filling the position of Regional Head in Regional Government since this has a significant impact on the democratic political life image

in Indonesia, in general.⁷ According to Bingham Powell Jr. several indicators of democratic political life in a country include:⁸

1. The legitimacy of government is based on the principle that the government represents the people.
2. To be legitimate, arrangements for those who are organizing bargaining is carried out through comprehensive general elections.
3. Adult people can participated as voters or as officially-elected participants.
4. Citizens vote by secret ballot without any element of coercion.
5. Society and leaders enjoy fundamental rights such as freedom of association, association and freedom of the press.

4 Amirudin and A. Zaini Bisri, 'Direct Pilkada: Problems and Prospects', *Student Library*, 2006, 59.

5 PF Whiteley, 'Is the Party over? The Decline of Party Activism and Membership across the Democratic World', *Party Politics*, 17 (1) (2011), 21-44.

6 WT Liao, QV, & Fu, 'Beyond the Filter Bubble: Interactive Effects of Perceived Threat and Topic Involvement on Selective Exposure to Information.', *In Proceedings of the SIGCHI Conference on Human Factors in Computing Systems*, 2013, 2359-2368).

7 B. (2015). Hutapea, 'The Legal Dynamics of Regional Head Elections in Indonesia', *Journal of Rechts Vinding: National Law Development Media*, 4 (1) (2015), 1-20.

8 MS Htun, M., Powell, GB, Carey, J., Ferree, KE, Hix, S., Krook, ML, ... & Shugart, Between Science and Engineering: Reflections on the APSA Presidential Task Force on Political Science, Electoral Rules, and Democratic Governance. *Perspectives on Politics*, 2013.

Democracy as a political system, stated as follows ⁹:

"Public policies of democracy political system are made on a majority basis, by representative subject to effective popular control at period elections conducted on the principle of political equality and under conditions of political freedom".

(In a democratic political system, public policy is based on the principle of public equality and is determined by the effective control of the people over permanent appointments by the people, and takes place in an atmosphere of guaranteed political freedom).

The concept of democracy is not easy to understand, because democracy has various connotations and the understanding sometimes depends on the perspective, place and time. Every country has the right to declare itself a democracy, even though the values used or the political reality of its power are contrary to the basic principles of democracy, for example: liberal democracy, people's democracy, proletarian democracy, communist democracy, guided democracy, presidential democracy, parliamentary

democracy, democracy. parliamentary, Pancasila democracy and so on.¹⁰

Of all the terms used in democracy is recognized as the most promising human value system in the world (Huntington, 2008). The democratic system is considered to be the most in accordance with the principles of humanization of values, which at first, humans generally experience trauma through a system of totalitarianism, fascism and other ideologies that lead to rejection of human values that should be upheld in a country.

In the concept of a democratic state (people's sovereignty), Yasin explains that several conditions are needed, such as ¹¹:

1. the existence of people
2. requirements for appointment in terms of filling and secret public positions or for selection using other means
3. political party requirements
4. the existence of an institution that is responsible for implementation and

9 N. Urbinati, 'Representative Democracy and Its Critics.', *The Future of Representative Democracy*, 2011, 23-49.

10 G. Sorensen, 'Democracy and Democratization: Processes and Prospects in a Changing World', *Routledge.*, 2018.

11 R. Yasin, 'Review of the Constitutional Court Decision in the 2004 Presidential Election PHPU Dispute (State Perspective of Constitutional Democracy).', *Journal of the Constitutions*, 11 (4) (2016), 650-670.

accountability to the public toward participants

In the West, the tendency to build democracy is getting stronger after the emergence of the constitutional democracy idea.¹² This democratic model is a system of power that is completely based on the principles of constituency.¹³ (For example, the power of government must be limited by Basic Law, namely the ruler, may not be above the Constitution.¹⁴ One of the limitations of this power is the power rotation, so that the rotation process takes place by filling the void, either through the people's representative bodies or directly through the people.¹⁵

Since the enactment of the Regional Government Law Number 32 of 2004 and Law Number 1 of 2015 concerning the Appointment of Governors, Regents and Mayors, the positions of governors, deputy governors and deputy governors, namely

Regional Heads and Deputy Regional Heads who are elected through general elections directly by the people and elected in pairs, as regulated in Article 24 paragraph 5.¹⁶ Therefore, the community is directly involved in determining the regional head and deputy regional head.¹⁷ This is different from the appointment system regulated in the previous 1999 Regional Government Law Number 22, for example, Article 34 paragraph 1 states that "appointments for the positions of regional heads and deputy regional heads are carried out to DPRD". Therefore, transition of the system for filling the regional heads positions, which was previously regulated by Law Number 22 Year 1999, by using a system of appointments carried out by people's representatives (representative of the popular vote), and in Law Number 32 of 2004 switching to a system of direct appointment of positions elected by the people (direct popular vote), as well as the latest rules in Law number 8 of 2015 concerning the stipulation of Perpu Nomo 1 of 2014 into law can be seen from several reasons, including:

12 A. Pelinka, 'Right-Wing Populism: Concept and Typology. Right-Wing Populism in Europe', *Politics and Discourse*, 2013, 3-22.

13 Azumardi Azra, *Democracy, Human Rights and Civil Society*, 2008.

14 D. Grimm, 'The Achievement of Constitutionalism and Its Prospects in a Changed World.', *The Twilight of Constitutionalism*, 2010, 1.

15 LT Bunte, JB, & Vinson, 'Local Power-Sharing Institutions and Interreligious Violence in Nigeria.', *Journal of Peace Research*, 53 (1) (2016), 49-65.

16 F. Jurdi, 'Introduction to General Election Law', *Golden.*, 2018.

17 Suharyono, *Democracy and Human Rights*, 2014.

First, in order to create consistency in the process of filling National and Regional Government positions, which is based on Article 6A of the Third Amendment of the 1945 Constitution stating that "the President and Vice President are directly elected as a pair by the people". Second, there is a crisis of public confidence in people's representative bodies, because in the process of appointment by them, it only emphasizes the aspect of political compromise, causes a conspiracy in order to find coalitions among the political configurations within the people's representative institutions.¹⁸ Third, it is hoped that there will be a joint commitment to bring leaders closer to the people in order to create welfare for their people.¹⁹

As stated above, this can be interpreted as a systematic interpretation (*systematische Interpretatie*) applied by the founders of the 2004 Regional Government Law in connection with changes on the appointment system, and this section can be

interpreted as the word democratic in article 18 (4) of the 1945 Constitution, known as filling direct positions by the people. However, Law 23 of 2014 explains in Article 18 paragraph 4 of the 1945 Constitution that the word Democracy is chosen by the provincial DPRD, but Law Number 23 of 2014 concerning Regional Government has not been implemented yet.²⁰ Despite, Perpu Number 8 of 2015 concerning the appointment of regional heads, regents and mayors, and Perpu number 2 of 2015 concerning amendments to Law Number 23 of 2014 concerning Regional Government, and in 2015, this Perppu has been enacted as Law Number 2 of 2015 concerning the Stipulation of Perppu number 2 concerning amendments to Law number 23 of 2014 concerning Regional government.²¹

According to Article 18 (4) of the Second Amendment of the 1945 Constitution, in a grammatical interpretation (*Grammatical Interpretative*) state that "Regional Heads, Regents, and Mayors respectively as heads of provincial, regency and city government

18 Suyahmo, *Political Philosophy*, 2016.

19 DS Wibowo, 'The Concept of Regional Head Election Model by the Regional People's Representative Council Preceded by a Public Trial Mechanism Reviewed Based on Article 18 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia.', *Student Journal Collection*, 1 (1). (2014), *Student Journal Collection Faculty of Law*, 1 (1).

20 Ramadani, Irwan Nasution, and Usman Tarigan, 'Analisis Pemilihan Kepala Desa Serentak Terhadap', *Perspektif*, 2019.

21 D WARSUDIN, 'PENGISIAN JABATAN KEPALA DAERAH PROVINSI SECARA DEMOKRATIS PASCA AMANDEMEN UUD 1945' (UNPAS, 2017).

are elected democratically". Therefore, this article implies that filling the position of Regional Head must be elected democratically, while democratic appointment means that it can be done through a representative body or directly elected by the people.²²

The above systematic interpretation and the drafters of Law Number 32 of 2004 are in line with Law Number 8 of 2015, explaining that filling out the positions of regional heads, regents and mayors has the same elements as the process of filling national leadership positions. This includes central positions (presidential appointment) and regional leaders (to fill regional heads), so that the system of positions for regional heads and national leaders uses a system of direct filling of positions (direct popular vote). The 1945 Constitution does not explicitly regulate filling the direct positions of regional heads in the process of appointing regional offices, so that the process of filling regional heads is based on the interpretation of the drafting of laws on the basis of the definition of "democratic", based on Article 18 paragraph (4) of the Second Amendment of the 1945

Constitution, in filling positions as regional heads.²³

If we pay attention to the process of the formation of Article 18, paragraph (4), it coincides with Article 18A and Article 18B, called as the Second Amendment of the 1945 Constitution at the MPR-RI Annual General Session in 2000. Furthermore, in the Chapter on Regional Government at the 2001 MPR-RI annual meeting, Article 22E was born out of the Third Amendment, however, it does not contain the provisions of Article 18 paragraph 4, and contains provisions of Article 18, paragraph 3, governing DPRD only. This means that the Constitution, does not intend to include the filling of regional head positions as contained in Article 22E, paragraph 1, which explains that the filling of regional heads is carried out directly, publicly, freely, secretly, honestly and fairly every five years.

It can be said that the MPR-RI as a state institution that has the authority to amend the constitution considers that the provisions in Article 18, paragraph (4), do not contradict the provisions in Article 22E. Therefore, the third amendment to this paragraph has not been transferred /

22 Apris Ara Tilome and others, 'Social Exchange of Political Elites in the Regional Leader Election of Gorontalo Province, Indonesia', *Solid State ...*, 2020.

23 I. Umanilo, M. C. B., Assagaf, S. A., Bahasoan, H., Nawawi, M., Umanilo, R., Hentihu, I., ... & Hamid, *NASKAH AKADEMIK BADAN USAHA MILIK DESA*, 2018.

included in article 22E²⁴ Meanwhile, the meaning of "democratically elected" does not necessarily mean that it is directly elected by the people, but indirectly (through DPRD) it can also be interpreted as democratic as long as the implementation process applies democratic values.

It is necessary to remember that the Unitary State of the Republic of Indonesia believes in and respects regional government units that are special or special, as stated in Article 18B, paragraph (1) of the 1945 Constitution. Therefore, the government is of the view that Article 18, paragraph 4 is not included in the Chapter of Filling General Positions in the Constitution 1945 was a wise political decision to safeguard regional diversity, political stability and the integrity of the Unitary State of the Republic of Indonesia²⁵.

As explained above, in relation to the history of Article 18, paragraph (4) and Article 22E of the 1945 Constitution, their philosophies, aims and objectives are different, resulted as the provisions of Article 18, paragraph (4) governing the filling of the Regional Heads Positions are democratically elected, is not included in Article 22E (Chapter VIIB Filling of General Offices). Thus, filling the positions of Regional Heads is not included in the regime for members of DPR, DPD, President and vice president, and DPRD, because Regional Heads, Regents and Mayors are elected democratically as referred to in Article 18, paragraph (4) of the 1945 Constitution, it can be done through two ways, namely through Law no. 22/2003 concerning the composition and position of the MPR, DPR, DPD and DPRD.

Based on the position of chairperson and deputy head of the region as well as Law No. 32 of 2004 regarding Law No. 1 and 2 of 2015, the process of filling regional chair positions in the regions has encouraged direct citizen participation. The existence of society determines that different views in a society, especially in determining the regional head and deputy regional head, each person has different interests and goals, more variability leading to more

24 R. SAVITRI, I. P., & Wirambra, 'Politik Hukum Lahirnya Pasal 18 Ayat 4 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945' (Universitas Islam Indonesia, 2020).

25 Chanif Nurcholis and Sri Wahyu Kridasakti, 'Reconstruction Of The Local Government Model Based On The Concept Of The Founding Fathers And The 1945 Constitution Juncto The 1945 Constitution Of The Republic Of Indonesia Towards Modern Local Government', *Yustisia Jurnal Hukum*, 2018 <<https://doi.org/10.20961/yustisia.v7i3.24610>>.

diverse choices of people, so that in the political process there are many negotiations and interactions. There are many opportunities for compromise, and this has led to the concept of coalitions and even interest in forging regional leadership relationships. (In such atmosphere, social conflicts may occur due to different interests and different goals (collective mind) and collective awareness to prevent conflicts both vertically and horizontally²⁶. The fact that the slightest conflict in the Pilkada shows that regional head elections remain problematic. Besides, the process of regional head elections still carries a tendency of primordial sentiments, both regionally, sub-culture, sub-ethnicity, and religion²⁷. This can be a trigger for dispute or conflict, because most voters see this sentiment as a matter of life and death. This sentiment also shows the meaninglessness of the candidate's program, vision and mission. If so, there needs to be a substantial increase in the quality of democracy itself.

26 Moch Nurhasim, 'Konflik Dalam Pilkada Langsung: Studi Tentang Penyebab Dan Dampak Konflik', *Jurnal Penelitian Politik*, 2010.

27 Triono Triono, 'Pemilu Dan Urgenitas Pendidikan Politik Masyarakat Dalam Mewujudkan Pemerintahan Yang Baik', *Jurnal Agregasi: Aksi Reformasi Government Dalam Demokrasi*, 2017 <<https://doi.org/10.34010/agregasi.v5i2.447>>.

Likewise with the process of filling in regional heads that cannot be separated from money politics and is difficult to avoid which in the end will give birth to leaders who are full of collusion, corruption, and nepotism.²⁸ Regarding monetary politics which is difficult to avoid in the process of its implementation. In the Pilkada process, starting from the determination of the voter list, the stages of submitting and determining candidates for regional head, the campaign stages, voting and counting the votes may lead to problems. After the implementation of the Pilkada, similar problems that may occur such as rejection of election results and being brought to court. There has been a lawsuit against the vote count results by the KPUD of 138 regions, consisting of 5 Pilgub / Deputy Governor, 113 Pilbup / Deputy Mayor, and 20 Mayor / Deputy Mayor. The High Court or Supreme Court generally rejected these 138 claims. There are 4 submissions for reconsiderating the high court decision, for filling the positions of KDH and WKDH in Depok City, Kab. Mappi, Kab. Raja Ampat and the City of Bitung. Likewise with North Maluku, where the resolution is protracted,

28 A. A. Dwipayana, 'Demokrasi Biaya Tinggi: Dimensi Ekonomi Dalam Proses Demokrasi Elektoral Di Indonesia Pasca Orde Baru', *Jurnal Ilmu Sosial Dan Ilmu Politik*, 12.3 (2009), 257-79.

these obstacles interfere with the administration of government and the functioning of public services.²⁹

Based on the problems above, this study aims to determine how the position of regional head should be filled related to the system and principles of Pancasila Democracy after the 1945 Constitution Amendments. At last, it is expected to find a concept of regulating the process of filling the Regional Head Position through filling positions that are held in a more democratic way. This study will later not only attempt to lay a theoretical - juridical thinking basis to analyze the formulated issues, but also to solve various problems that arise and are relevant to the electoral system in order to fill the position of Regional Head at the provincial government level.

METODE

This research uses normative legal research methods. In this case, the normative approach is intended to be used as an effort to bring the issues discussed closer to the normative nature of the law. The normative approach includes legal principles, legal systems, legal synchronization, and legal history 30. At the

same time, it appears that there are overlapping legislative problems that can lead to different interpretations of the empirical legal approach, especially elections, laws and procedures related to regional head elections.³¹ Sources of information for this research include: (1) Primary information, including data obtained directly from the source; Central and Regional KPUs, as well as an authoritative and credible party; (2) Secondary data are official documents, books, and research papers relating to the issues discussed in this dissertation which are divided into reports, laws and regulations and regulations as follows: (a) research on the principles of constitutional jurisprudence, the body state Administration, (b) review of the legal framework for the 1945 Constitution and related laws and regulations, in particular the provisions governing the administration of regional governments and the appointment of governors, (c) examining the level of legal synchronization, such as the level of synchronization and integration between the

29 KPU Central Media Center, 'No Title', 2013.

30 Zulfi Diane Zaini, 'Implementasi Pendekatan Yuridis Normatif Dan

Pendekatan Normatif Sosiologis Dalam Penelitian Ilmu Hukum', *Pranata Hukum*, 2011.

31 F. C. Susila Adiyanta, 'Urban Space Governance and Sustainable Green Development in Indonesia', *International Journal of Energy Economics and Policy*, 2020 <<https://doi.org/10.32479/ijeep.8065>>.

1945 Constitution, the Criminal Code and the Pilkada Law, as well as other regulations governing election administration, (d) carry out a census of positive laws, especially laws regulating the content of regional government, regional head elections and general elections, (e) The study is conducted in the form of legislative and legislative disclosures that regulate the most appropriate mechanism for holding regional head elections according to Pancasila and the 1945 Constitution.

RESULT AND DISCUSSION

The Practice of Organizing Direct and Indirect Regional Head Elections in Indonesia

Historically, the idea of including Pilkada in the election government is believed to be a tool for enhancing the democratic system at the regional level. Some experts think that the identification of this latest determination is very meaningful for changing the democratic system in Indonesia. In particular, it provides opportunities for local residents to choose leaders who represent local democracy.³² Forms and methods of

democracy in the regions through the implementation of Pilkada as a manifestation of sovereignty and affirming that citizens in the area have the right to elect their own regional head.³³

Pilkada basically has 3 (three) important roles in the implementation of regional governance. First, selecting regional leaders who are expected to be able to understand and implement the wishes of the people in their area. Second, regional head elections are expected to be based on the vision, mission, programs, and quality and integrity of regional government candidates, which will greatly determine the success of governance in the regions. Third, regional head elections are a tool for evaluating the actions of regional heads and the political strengths of their supporters, as well as a mean of monitoring public political accountability.³⁴ The history of filling positions in Indonesia cannot be separated

32 Lita Tyesta Addy Listiya Wardhani, Farid Ibrahim, and Adissya Mega Christia, "Koherensi Sistem Pemilihan Kepala Daerah Di Indonesia Terhadap Nilai-Nilai Demokrasi Pancasila," *Jurnal Pembangunan*

Hukum Indonesia, 2020, <https://doi.org/10.14710/jphi.v2i3.305-318>.

33 A. M. Hsb, 'Pengujian Peraturan Pemerintah Pengganti Undang-Undang', 2018.

34 Sayyidatul Insiyah, Xavier Nugraha, and Shevierra Danmadiyah, "PEMILIHAN KEPALA DAERAH OLEH DEWAN PERWAKILAN RAKYAT DAERAH: SEBUAH KOMPARASI DENGAN PEMILIHAN SECARA LANGSUNG OLEH RAKYAT," *Supremasi Hukum: Jurnal Penelitian Hukum*, 2019, <https://doi.org/10.33369/jsh.28.2.164-187>.

from the development of regional government and regional government structure.³⁵ Local government has changed its form over time.³⁶ Each stage of appointment has a different form and structure, and the appointment is based on general rules established by law.³⁷ Filling the Regional Head Positions through Indirect Election

For the first time since Indonesia's independence, Law Number 1 of 1945 concerning the Regulatory Position of Regional National Committees was passed in 1945, filling typology with appointments. The law does not explicitly regulate the appointment of regional heads, but regional heads are appointed by the Regional National Committee, called as the Regional People's Representative Body. The position of regional head was held by the Indonesian government during the early days of

Indonesian independence. Furthermore, in the implementation of Law Number 22 Year 1948 concerning Regional Government, it regulates the appointment by the President for the position of Head of a provincial region proposed by the Provincial DPRD. Meanwhile, the Regent (big city) is appointed by the Minister of Home Affairs at the suggestion of the Regency DPRD (big city).

During the Old era as well as after the New Order, prior to the amendments to the 1945 Constitution, the appointment of regional heads was the prerogative of the President. It is caused by the government system that was recognized at that time was a presidential government system, which the President had full authority in the government sector and the right to determine regional heads who were part of the administration. At the same time, the 1945 Constitution does not explicitly regulate the position of regional leadership. Since the regional head is part of the regional government who is the assistant to the President at the regional level, the appointment of the regional head is the prerogative of the President. Despite the centralization of local government, there are two types of post-amendment filling, namely (1) indirect regional head elections, through DPRD, (2) direct election by the

35 D. Suyanto, *Evaluasi Pemilukada Dari Prespektif Ketahanan Nasional: Demokrasi Lokal, Evaluasi Pemilukada Di Indonesia* (Jakarta: Kompas, 2012).

36 H. Babies Priyono, NPM, Promotor, C., & Mashudi, 'THE EXISTENCE OF DOMESTIC GOVERNMENT INSTITUTIONS AS KEPAMONGPRAJA HIGH EDUCATION INSTITUTIONS IN FILLING OFFICES IN LOCAL GOVERNMENT BASED ON INDONESIAN STATE LAWS' (Unpas).

37 Y. P. Rachda, "Jabatan Wakil Menteri Dalam Sistem Ketatanegaraan Republik Indonesia" (Universitas Muhammadiyah Mataram, 2020).

people. When the reform era occurred, it demanded autonomy and democratization in the regions, resulted in changing patterns of filling regional head positions.³⁸ Therefore, in accordance with Article 18 of the 1945 Constitution, the 1945 Constitution was amended in connection with regional head elections. For the first time since reform, Law Number 22 Year 1999 was replaced by Law Number 5 Year 1974 concerning Regional Government, which was deemed not to accommodate the implementation of broad regional autonomy. Law Number 22 Year 1999 stipulates that Regional Head elections are conducted by DPRD. Therefore, for the first time the Regional Head election was carried out directly in Indonesia, and at the time of the Regional Head election, the DPRD has full authority. This is because in addition to implementing regional autonomy widely and fully placed in district and city governments, DPRD has great authority in organizing regional elections and the accountability of regional heads is carried out to DPRD.

This approach is in line with the values of the Fourth Principle of Pancasila, which are based on the people's representation system in regional head elections. So that

the regional head elections will be carried out by the DPRD as people's representatives. Furthermore, such approach will provoke protests and a lot of money politics in the DPRD. However, with the reform of Article 18 of the 1945 Constitution, to accommodate demands for reform, namely the emergence of democracy, paragraph 4, it is clear that regional head elections are conducted democratically, except for regions with special autonomy. The Pilkada system indirectly, does not conflict with Pancasila and the 1945 Constitution, but the democracy applied in this system is representative democracy through members of the local DPRD. DPRD members are the embodiment of Indonesia.³⁹

1. Filling the Regional Head Positions through Direct Election

In direct Pilkada, the participation of local citizens is democratic and active. This provides an opportunity for local communities to become holders of power through democratic means and to create good democracy in expressing their choices well. Local communities are at the forefront of overseeing the implementation of

³⁸ H. A. W. Widjaja, *Otonomi Daerah* (Jakarta: Rajawali Press, 2007).

³⁹ Wahyu Widodo, 'Pelaksanaan Pilkada Berdasarkan Asas Demokrasi Dan Nilai-Nilai Pancasila', *Civis*, 2015.

democracy.⁴⁰ The success of the direct elections to build an image of democratic regional leadership, official leadership, depends on the perception of regional democracy.⁴¹ In particular, in the context of Indonesian local democracy, there are five foundations for direct regional head elections, known as a response to the aspirations and hopes of the community, development of constitutional political democracy; civic education media, however, in the history of direct Pilkada implementation, it can be carried out after heated debates whether the mechanism is directly carried out by the DPRD. The debate took place in 2005, but heated up again in 2014. The basis for the Pilkada legal philosophy, which underlies the dynamics of the Pilkada debate is Article 18, paragraph (4) of the 1945 Constitution, in which the Regional Heads of Regents and Mayors are democratically elected. The term "democratically elected" means that the regional head must be elected directly, but

can also be elected indirectly if the process is democratic.⁴²

The appointment of regional heads in this typology is based on Law no. 32 of 2004, in line with Law no. 22 of 1999. The change in the typology of filling regional head positions at that time was due to changes in Article 18, paragraph (4) of the 1945 Constitution explaining that regional head elections are carried out in a democratic manner. Therefore, the Regional Government Law Number 32 Year 2004 was drafted which states that it is mandatory for a regional head and deputy regional head candidate pair to be a pair from a political party or a coalition of political parties to meet the requirements stipulated in the law. Elections are held on a democratic basis, based on the principles of direct, general, free, secret, honest and fair. The election is carried out by an independent body, namely the KPUD. However, Article 18 of the 1945 Constitution states that the Governor-deputy governor, regent-deputy regent and deputy mayor can be elected democratically. Democracy can be direct and indirect.

⁴⁰ Ajat Sudrajat, 'DEMOKRASI PANCASILA Dalam PERSPEKTIF SEJARAH', *MOZAIK: Jurnal Ilmu-Ilmu Sosial Dan Humaniora*, 2016 <<https://doi.org/10.21831/moz.v8i1.10763>>.

⁴¹ Sri Nuryanti, 'Intervensi Penyelenggaraan Pemilukada: Regulasi, Sumberdaya Dan Eksekusi', *Jurnal Ilmu Sosial Dan Ilmu Politik*, 2016 <<https://doi.org/10.22146/jsp.10849>>.

⁴² R. ROHAJI, 'THE IMPLEMENTATION OF ELECTION SUPERVISORY AGENCY REGULATION NUMBER 14 OF 2017 CONCERNING THE HANDLING OF ELECTION VIOLATIONS OF REGIONAL HEAD ELECTION VIOLATIONS SIYĀSAH DUSTŪRIYYĀH (Study at the Election Supervisory Agency of Tanggamus Regency)' (UIN Raden Intan Lampung, 2020).

Initially, elections were carried out with a representative mechanism by the DPRD, and now the electoral system is being changed directly by the people. In principle, the two systems do not conflict with Pancasila and the 1945 Constitution. However, direct elections are a more tangible form of democracy; elections that are carried out directly by the people from the people, and for the people.⁴³ Pilkada is a democracy that directly depends on the people's choice. Therefore, direct regional elections are one of the strategies to improve the quality of democracy as a whole.

Regional Head Election System with the Principles of Pancasila Democracy after the 1945 Constitution Amendments

Pancasila is the legal basis and source of all laws. All laws and regulations in Indonesia must be based on and not in conflict with Pancasila. Furthermore, it will have implications for the foundation of the state philosophy, which is the way of life of society and Indonesia. This indicates that Pancasila is constitutive and regulative in the life of society and the state. Its implementation in state practice, both the legal system and the state life system must

be based on and reflect Pancasila. So Pancasila is the *volksgeist* of the Indonesian people.⁴⁴

The main points of the definition of Pancasila Democracy include democracy which is based on the principles of kinship, religious elements, the basis of truth, love and noble character, has an Indonesian personality and is sustainable; a state organizing system carried out by the people themselves or with the consent of the people; individual freedom that is not absolute, and unity of democratic ideals and the ideals of life of the Indonesian nation with a family spirit without a majority or minority.⁴⁵ To interpret these values philosophically, Pancasila ideology is understood as a unified system of ideas that gives society a rationalization of a way of life which becomes a right or wrong guide in public affairs and the urge to act reminds that the role of ideology is very important. In accordance with that, the individual or the collectivity is always consistent in their

⁴³ S. Latif, Y., Haryatmoko, J., Nalle, V. I., Aryani, M. I., & Sutrisno, 'Masih Perlukah Demokrasi Pancasila Di Indonesia?', *Prosiding Simposium Nasional Filsafat*, 2014.

⁴⁴ Rocky Marbun, 'Grand Design Politik Hukum Pidana Dan Sistem Hukum Pidana Indonesia Berdasarkan Pancasila Dan Undang-Undang Dasar Negara Republik Indonesia 1945', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 2014 <<https://doi.org/10.22304/pjih.v1n3.a8>>.

⁴⁵ R Mulyono, G dan Fatoni, 'Demokrasi Sebagai Wujud Nilai-Nilai Sila Keempat Pancasila Dalam Pemilihan Umum Daerah Di Indonesia', *Citizenship Jurnal Pancasila Dan Kewarganegaraan*, 2019.

steps and thoughts and does not lose direction. Even so, ideology must be based on universal values in order to guarantee a dignified life.⁴⁶ Pancasila is placed as a margin of appreciation, namely as a balancer and harmonizer, even justifying the enactment of national values within the framework of universal values.⁴⁷

As a margin of appreciation, Pancasila does not need to be described, but is placed as an open ideology and its function as a margin of appreciation is left to the interaction of all elements of society both in the public and private sectors, empirically on a case-by-case basis.⁴⁸ As an open ideology, Pancasila is a screening-board, standard guide lines in the form of a checklist that is cumulative and is not an alternative. It means that as a justification tool for every behavior, the test results related to the Five Principles of Pancasila must be positive, there must be no negative ones. Final decision-making is determined casuistically, by assessing positive trends. However, it must be remembered that

operating Pancasila as a margin of appreciation requires operators who have professionalism in their fields, strong and ethical leadership, accompanied by strong national insight, who are comprehensive, integral, systematic, visionary, imaginative and understand comparative advantages in the midst of globalization.⁴⁹

Pancasila is a system of ideological values with degrees. Pancasila contains noble values, basic values, instrumental values, practical values, and technical values. Noble values and basic values must be permanent, but their instrumental values must be reformed according to the developments and demands of the times. Since the beginning, Pancasila has been used as a way of life as well as the basic principles of the state. Pancasila is closely related to social values.⁵⁰ The fourth precept is imbued with and inspired by the principles of One Godhead, Just and Civilized Humanity, Indonesian Unity, encompassing and animating social justice for all Indonesian people. The fourth precept states the primacy of the interests of the state and society.

The Fourth Precept of Pancasila when linked to filling the position of regional head

⁴⁶ A. G. Anshori, *Filsafat Hukum* (Ugm Press, 2018).

⁴⁷ Asli U. Bali and Hanna Lerner, 'Constitutional Design Without Constitutional Moments: Lessons from Religiously Divided Societies', *SSRN Electronic Journal*, 2016 <<https://doi.org/10.2139/ssrn.2812662>>.

⁴⁸ SH Hangabei, SM, Khudzafah Dimiyati, SH, Absori, SH, & Natangsa Surbakti, 'IDEOLOGY AND LEGAL ORIENTATION: Accommodation of Legal Ideals in Law in the Economic Sector' (Muhammadiyah University of Surakarta, 2020).

⁴⁹ A. Hoefte, R., Nordholt, H. S., Laffan, M., Vickers, A., & Tsing, 'Southeast Asia Mediated'.

⁵⁰ Hoefte, R., Nordholt, H. S., Laffan, M., Vickers, A., & Tsing.

directly raises debate whether it is contradictory or not. In fact, the filling of the position of a regional head as regulated in Article 18, paragraph (4) of the 1945 Constitution is ordered where democratic elections are ordered which are subsequently spelled out in law as direct elections. If it is related to the various explanations above, then it does not conflict with the value of deliberation / representation. So that the Fourth Precept should be interpreted as the existence of a representative institution of the people as a forum for representative democracy which later on will carry out its duties to carry out various interests of state administration by deliberating various aspirations of the people together with regional heads.⁵¹

The linkage of the Fourth Principle of Pancasila to the Pilkada system directly needs to be linked to methods in decision-making that prioritize the deliberative consensus system. This means that the Pilkada system needs to absorb meaning based on the deliberation of all people, so that minority groups can be represented as well. It can contradict the underlying method of the Direct Pilkada, which prioritizes the concept of "one man, one vote", only the majority (majority) are

⁵¹ M. FADHILLAH, 'PRESIDENTIAL THRESHOLD DALAM SISTEM PRESIDENSIAL', 2018.

represented, but the few (minority) votes can just disappear. Even so, the Direct Pilkada is also not completely contradictory as long as its existence is imbued with a family spirit, that there is no majority or minority domination as the meaning of Pancasila Democracy.⁵²

The meaning of deliberation in the Fourth Principle of Pancasila means that the principle of deliberation for consensus is put forward through their representatives and representative bodies in fighting for the people's mandate.⁵³ So if the meaning of representation is taken literally, it may contain an understanding that Pilkada that reflects the value of the Fourth Precept of Pancasila should still be carried out in stages through a representative body, in this case the DPRD.⁵⁴ The problem of determining whether a regional head election will be carried out directly or indirectly is in essence very much dependent on the results of the noble agreement of the representatives of the people. It is hoped that the noble agreement of the representatives of the people will continue to pay attention to the

⁵² Mulyono, G dan Fatoni.

⁵³ Yusdiyanto Yusdiyanto, 'Makna Filosofis Nilai-Nilai Sila Ke-empat Pancasila Dalam Sistem Demokrasi Di Indonesia', *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 2017
<<https://doi.org/10.25041/fiatjustisia.v10no2.623>>.

⁵⁴ Widodo.

noble values that live in Indonesia which are the incarnation of Pancasila.

The explanation of this matter has actually been answered in the Decision of the Constitutional Court Number 072-073 / PUU-II / 2004 which clearly states "That to implement Article 18 of the 1945 Constitution is the authority of the legislators to choose direct election methods or other democratic methods. Because the 1945 Constitution has established Pilkada in a democratic manner, both direct elections and other means. " Based on these considerations it means that actually the policy to implement Article 18 paragraph (4) of the 1945 Constitution, especially the phrase "democratically elected" for regional heads (governors, regents and mayors) is an opened legal policy for legislators. That way Pilkada, conducted directly or indirectly, becomes part of the authority of the legislators to determine it. However, if the basis of the explanation of this matter has been answered in the Constitutional Court Decision Number 072-073 / PUU-II / 2004 which clearly states "That to implement Article 18 of the 1945 Constitution is the authority of the legislators to choose direct election methods or other democratic methods. Because the 1945 Constitution has established Pilkada in a democratic manner, both direct elections and other means".

Based on these considerations it means that in fact the policy to implement Article 18 paragraph (4) of the 1945 Constitution, especially the phrase 'democratically elected' for regional heads (Governors, Regents, and Mayors) is an opened legal policy for legislators. Thus, Pilkada, which is conducted directly or indirectly, becomes part of the authority of the legislators to determine it. However, if the basis is only fixed on the Open Legal Policy, then only the parties with the largest number of seats can determine the Pilkada system that is desired and may be more profitable.⁵⁵

This, of course, may not be consistent if the Pilkada system is only based on the basis of an opened legal policy. Therefore, should amendments be made to the 1945 Constitution? To answer the question mark, it can actually be understood in the Constitutional Court Decision Number 97 / PUU-XI / 2013, which explains the rationale behind the birth of the formulation of Article 18, paragraph (4) of the 1945 Constitution when it is a Pilkada system that will be applied in accordance with the development of society and the conditions

⁵⁵ 'Eksistensi Pemilukada Dalam Rangka Mewujudkan Pemerintahan Daerah Yang Demokratis', *Mimbar Hukum*, 2011 <<https://doi.org/10.22146/jmh.16200>>.

in each region concerned.⁵⁶ Lawmakers can formulate the electoral system desired by the community in filling regional head positions so that the community has a choice whether to implement a representative system carried out by the DPRD or through direct elections by the people.⁵⁷

This is the open legal policy of the legislators, and is closely related to the respect and protection of the constitution against the diversity of customs and cultures of the people in various different regions.⁵⁸ There are regions that are more inclined to implement a system of indirect election by the people and there are regions that tend to be and are more prepared for a system of direct election by the people. Both the direct election system and the indirect election system are categorized as democratic systems.⁵⁹ Based on this, it can be understood that the two Pilkada systems (both direct and indirect) are both democratic and coherent with the Fourth Precepts of Pancasila, because Pancasila is

an open ideology, containing basic orientations, while translating it into goals and norms. Socio-political norms can always be questioned and adjusted to the values and moral principles that develop in the community.⁶⁰

The solution to the national problem in developing Pancasila requires several factors. First, awareness of the values contained in Pancasila. This should be done to the public and state officials. Second, improve the mentality of state officials by always instilling the values of Pancasila.⁶¹ Knowledge of the values of Pancasila will add to one's experience and absorption of knowledge about Pancasila into one's mind, heart and mind. Third, instilling Pancasila values into the conscience. Conscience is a source of concern and empathy for the noble values of Pancasila.⁶² The ideal democracy must be worked out by continuing to readjust the reality that has occurred in the practice of democracy in Indonesia with Pancasila.

CONCLUSION

⁵⁶ Lutfil Ansori, 'Diskresi Dan Pertanggungjawaban Pemerintah Dalam Penyelenggaraan Pemerintahan', *Jurnal Yuridis*, 2015.

⁵⁷ S. Sodikin, 'Kedaulatan Rakyat Dan Pemilihan Kepala Daerah Dalam Konteks Undang-Undang Dasar Negara Republik Indonesia Tahun 1945', *Jurnal Cita Hukum*, 2.1 (2014).

⁵⁸ R. Nazriyah, 'Penyelesaian Sengketa Pilkada Setelah Putusan Mahkamah Konstitusi Nomor 97/PUU-XI/2013', *Jurnal Konstitusi*, 2016 <<https://doi.org/10.31078/jk1232>>.

⁵⁹ Hsb.

⁶⁰ Latif, Y., Haryatmoko, J., Nalle, V. I., Aryani, M. I., & Sutrisno.

⁶¹ Syahrul Kirom, 'Filsafat Ilmu Dan Arah Pengembangan Pancasila: Relevansinya Dalam Mengatasi Persoalan Kebangsaan', *Jurnal Filsafat 'WISDOM'*, 2011.

⁶² Kirom.

Based on previous description, it can be understood that Indonesia has gone through a long history of trying to fill positions at regional level. The Pilkada system, both directly and indirectly, has long been implemented in Indonesia. The implementation of the Pilkada system is indirectly found in 2 (two) phases; at the first phase, the Pilkada system is more focused on the President as the Central Government and the second phase occurs in the post-amendment period giving DPRD a legitimacy to elect Regional Heads from the two phases. This has led to various polemics; money politics actions have occurred and the people's oversight of the regional head is weak, because the method of accountability of the regional head is not directly to the people. It is different from the Direct Pilkada System taking place in 2005 with a democratic election method based on direct, general, free, secret, honest and fair principles, but it was found that this system could weaken the position of the DPRD and cause greater political costs. It can be understood that the mechanism for filling the position of Regional Head follows the conditions of people's needs in a region and it should be noted that the constitution applied on each period influences the character of the law that implements and

regulates regional governance underlying the Pancasila values.

The framework from the idea of Pancasila Democracy, means that the democracy is not an imitation of liberal democracy or else, but is born naturally from the noble values of culture and ethnic groups of Indonesian itself, and is characterized by a system of state organization carried out, or with the consent of the people. Both the Pilkada system, directly and indirectly, remain in accordance with the values of Pancasila Democracy, since Pancasila itself is an open ideology which means that it only regulates basic matters while its implementation is adjusted to existing socio-political conditions. However, the values of Pancasila Democracy need to be interpreted in the concept of deliberation of all people based on mutual cooperation, so that there is no group domination.

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