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# The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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# RECONSTRUCTION OF LEGAL PROTECTION DISTRICT HEAD IN THE ELECTION IMPLEMENTATION OF VALUE-BASED JUSTICE

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## ABSTRACT

Regional Head Election (Election) directly represent the democratic party will choose direct Regional Head, things in the most tangible manifestation of sovereignty in the hands of the people, as well as the most concrete manifestation in the state administration. Therefore, the system and the organization of the elections is a major concern because through compliance and quality system, the organization of the elections are expected to be able to truly realize of, by and for the people.

In this election there are six (6) issues, namely: (1) election marred by political money and the high cost. (2) Election marred lack of neutrality and the movement of Bureaucracy. (3) That would create horizontal conflicts. (4) Sustainability Political Dynasty. (5) a single candidate in the elections (closing the independent candidates and all buy all political party) and (6) Role of Head highly strategic to the success of the elections. Based on the background of the problem dissertation problem is formulated as follows : (1) Why legal protection Head in the elections this time has not been based on values of justice (2) any constraints faced regarding the protection Head in the elections this time? and (3) How rekonstruksi Head of legal protection in the implementation of the elections based on values of justice?

This research is a qualitative sociological juridical approach (Socio Legal Approach). This research approach based on the existing problems want to find a deep meaning and details of the implementation and assessment rbagai legal aspects of relations with non-legal aspects of the working of the law in society. Legal research sociological research follows the pattern of the social sciences in particular so-called socio Legal research research. This study aims to reveal the legal protection Head tasks in the implementation of the elections based on values of justice.

The research findings indicate that the Head of Legal Reconstruction in the implementation of local elections is dialam Article 70 (1) c Undang-- Law Number 10 Year No. I of 2014 on the Election of governors, regents and mayors into Law - Law, reads: in the campaign of the candidate pairs banned involves: c. Village Head or other title / Village and the Village or any other designation. Device Village, direkonstrusikan be a partner in the campaign of candidates allowed to involve: c. Devices district and sub-district, the village chief or other designation / Village and the Village or any other designation / Irish Village. It

underlies that Head and devices not yet entered the District specifically, when the authority of Head very strategic in the election.

In Article 162 (3) of Law No. 10 of 2016 declared the governor, regent or mayor who will perform the replacement officials in lingkungan Government of Proponsi or state / city in a period of 6 (six) months from the date of the inauguration must obtain the written approval of the Minister, recontextualised became governor, regent or mayor who will make the turn positions in the Government of the Province or District / Town including the post of Head within a period of one (1) year after the date of the inauguration and must obtain the written approval of the Minister, this reconstruction is conceived mean that the implementation of the budget ( budget Revenue and Expenditure) is one year, so that when mutated or removed six months of his then Head of latent performance.

Keywords : Legal Protection Head, Regional Head Election, Justice Values base

## **A. PRELIMINARY**

Elections are discussed in this article is the election of Regional Head, known as the elections (local elections). It is interesting to talk about remembering history, since the reign of the Dutch East Indies, the Japanese occupation, after the proclamation of independence, the New Order era, and the era of reform today, the position and role of Regional Head with a variety of mention as Governor, Regents, Mayors, has shown existence, both as a leader in protecting governmental organizations, to protect and serve the public as well as in leading government organizations.

Since June 2005, the Indonesian nation entered a new phase with regard to the implementation of local-level governance. For this purpose, the government has enacted Law No. 32 of 2004 on Regional Government in lieu of Law No. 22 of 1999. Act No. 32 of 2004 was replaced Law No. 23 of 2014. After that, the Government issued a regulation has No. 1 of 2014 as the amendment of Law No. 23 of 2014 was passed into Law No. 2 Th. 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Amendment to Law Number 23 Year 2014 on Regional Government Become Law. The government has also issued Regulation No. 17 of 2005 as a replacement for PP No. 6 Year 2005 regarding the Election, Legalization, Peng-angkatan, and Dismissal of Regional Head and Deputy Regional Head. One of the important issues in the Act, regulation has and the PP is associated with the setting direct election of Regional Head. Post-ratification of Government Regulation No. 17 of 2005, the Regional Head, both the Regent / Mayor or Governor who previously elected indirectly by Parliament, since June 2005 elected directly by the people through the electoral process is often abbreviated Regional Head with Direct elections.

Article 56 paragraph (1) of Law No. 32 of 2004 states, "Regional Head and Deputy Head of Region shall be elected as candidates were conducted democratically, direct, public, free, confidential, honest and fair". The candidates are the candidates proposed political party or coalition of political parties that support at least 15 percent of the seats of Parliament or of the accumulated acquisition of valid votes in the legislative elections. With the direct election of Regional Head, Regional Head as the Governor (of the province) and Regent / Mayor (district / city) elected directly by the people. Since the Regional Head elected directly by the people, then conceptually has been a shift in the implementation of the sovereignty, which previously held indirectly by the parliament, is now done by the people.

Thereafter, Law No. 32 of 2004 was revised and replaced by Act No. 12 of 2008 on the Amendment Against the Law on Regional Autonomy. There is a striking thing in these changes, which allowed the individual candidates not only candidates fielded by political parties to become a candidate in the election of Regional Head directly.

Direct local elections is not without problems. Direct local elections also have many problem, political implications, and socio-economic impacts, whether favorable or not. In practice, a number of problems that arise in the administration of elections has its own polemics and debate space mainly on aspects of the management of elections. There are at least six (6) problems that often occur in the field

1. Pilkada in Indonesia tinged with political phenomena of money and high costs
2. Pilkada colored by partiality and deployment of bureaucracy
3. Timbul horizontal conflicts Political
4. Keberlangsungan dynasty Single
5. Calon in the elections (closing of independent candidates and buy all political party) Subdistrict
6. Peran very strategic in the success of Direct Election

## **B. RESEARCH METHODS**

### **a. Research paradigm**

The paradigm used in this study is constructivism. Constructivism paradigm is the paradigm of a social reality where truth is seen as socially constructed, and the truth of the social reality is relative. Constructivism is in perspective interpretivism (interpretation) which is divided into three types, namely symbolic interaction, phenomenological and hermeneutical.<sup>236</sup>

### **b. Method approach method approach**

This research is qualitative sociological juridical approach (Socio Legal Approach). Use of this research approach based on the existing problems about to find deep meaning and details of the phenomenon.

Sociological juridical approach is intended as an application and assessment of legal aspects of relations with non-legal aspects of the working of the law in society. Legal research sociological research follows the pattern of the social sciences, especially sociology so this research is called socio legal research. This study aims to reveal the legal protection tasks in the implementation of district head elections based on values of justice.

### **c. Specifications Research**

This type of research is descriptive. Analytical descriptive, because research conducted aims to create a picture of a situation objectively in a situation. By collecting secondary data related to the concept, the provisions and mechanisms of elections, then compiled, classified, analyzed and interpreted, with the hope obtained a description of the implementation of the elections that have not been based on justice.

#### **a. Sources and Methods of Data Collection**

##### **The data source is:**

##### **1) Data Primer**

Primary data is data obtained directly from the first source. The primary data obtained through interviews with informants.

2) Secondary data

Secondary data is data that would normally have been arranged in the form of documents secondary data obtained by conducting an inventory of documents the Election Day Jump in Central Java province, legislation and legal materials related to the problems studied, books, reports the results of the discussion and the internet.

Tertiary legal materials used in this study a dictionary consisting of Indonesian Dictionary and Dictionary of Law and encyclopedia.

**b. Data collection methods are:**

The data collection is done in three ways, namely literature, observation and interviews. The data collection is done with the literature search literature and inventory problems related to the theory of literature from a variety of sources. Literature search including by reviewing the normative to the text of laws and regulations as well as documents or manuscripts related.

**c. Sampling method**

Purposive sampling method using non-random sampling, namely matters concerning regulations and institutions in the legal protection tasks in the implementation of district head elections based on values of justice. Information extracted based on the qualifications of science and knowledge. Researchers tend to choose informants deemed to know and can trust to be a source of data and know in depth about the issues to be studied. According to Sutopo with this technique will be able to capture the depth of the data and in the face of the reality that not a single.

**d. Data analysis method**

After all the required data is collected, then conducted an examination of both data obtained through interviews or written data exists. Then the data is processed and arranged systematically. Because the data is monografis or tangible cases, so can not be organized into a classification structure, then the analysis used is descriptive qualitative

## C. RESULTS AND DISCUSSION

**a. Of elections in Central Java Province of Registration Until Inauguration**

The elections in 2015 to examine the role of neutrality camat. The official position can be a source of conflict. Minister of the Interior (Home Affairs) Tjahjo Kumolo reminded the regent / mayor in order to supervise the movements camat start of the campaign until the vote count. Tjahjo express (2015), Game sound may occur in the District with a trick to add zeros and one potentially occur. Suspected source of conflict arises from the elections for the District in the form of a sound play area. National Police Chief Gen. Badrodin Haiti suggests that the level of vulnerability to disturbance of order and the security of elections in Central Java is not too high and some areas should be wary. It should be noted in Central Java never conflicts with the candidates in Purbalingga, Klaten, Demak and Pekalongan. Other violations related to still dualism stewardship of political parties that present more than one candidate from the same party. The case occurred in Boyolali, Kebumen, Purbalingga and Pekalongan.

**b. Legal Protection District Head in local elections**

Subdistrict very strategic role during the Election Day. Camat lead governance at district level were obtained delegation of authority from the regent or mayor. As government officials they also pivot the meeting of residents with various political forces. Camat direct contact with many parties during the elections.

Because of the strategic role of this position then Subdistrict need protection law properly. As a public servant dragged them prone to conflict or even become the target

crosshairs parties who do not want neutrality maintained. Camat demanded full responsibility for the success of the election in the District. His role is vital to boost the participation of citizens. They shared Muspika also have central gait reduce all risk of volatility so that the implementation of well established political celebration. "The problem in order to promote the smooth elections that there are tasks Camat which can sometimes lead to bad presumption.

Eg, sub can be considered to defend the interests of certain political when she only wanted to protect the citizens. legal protection for Camat during stints serving the community must be put forward. Maximum legal protection for personnel at once would make a good result in the elections held by a sincere leader to serve the people."

**c. Implementation of Regional Head Election Remaining Value-Based Justice**

Election and Election constitutional basis set out in Article 18 (4) NRI 1945 Constitution which reads "Governors, Regents and Mayors of each head of Provincial Government, District and Municipal, elected democratically". This article actually has accommodated electoral models and the elections, either directly or indirectly, and is seen both models berkesuaian with the 4th principle of Pancasila.

At the level of normative and empirical experience, filling the Head of Region by Parliament has been agreed, as a result of deliberation. Election Law (Law No. 8 of 2012), while for the elections are set in the Local Government Act (Act No. 22 of 1999 jo. Law No. 32 of 2004). In Act 22/1999, Article 18 (1a) states that "Parliament has the duty and authority to elect the Governor / Deputy Governor Regent / Deputy Regent and the Mayor / Deputy Mayor".

Direct elections of regional heads constitute need to correct the deviation of local autonomy shown that local elites. The assumption that regional autonomy will further improve the quality of public services, in many cases turned out to be just empty promises that are not proven kebenarannya. It is precisely the proliferation behavior of local elites from both the government and parliament that demonstrate the spirit of dredge

Direct local elections should be included in the wider framework to realize a democratic local government. There are at least three reasons why the direct election of Regional Heads should be linked to democratic local governance.

Direct election is a tangible manifestation of the establishment of democracy in the region. Regional Head and Vice Regional Head of the candidate's chosen in the democratic management based on the principles of direct, public, free, confidential, honest and fair. Regional Head candidates filing can be done by a political party or coalition of political parties that have seats in Parliament with certain requirements and / or of individual candidates with certain requirements as well. It takes a good choice by the people against the couple that can be produced Regional Head Regional Head partner who has the vision improve people's welfare area.

Renewal or reconstruction of the terminology has a wide range of understanding, in national development planning is often known as reconstruction. Reconstruction means that "re" means renewal while the "construction" as described above means a system or form. Some experts define reconstruction in various interpretations B.N Marbun simply define the preparation or depictions back from existing materials and rearranged to perfection or ideal. Meanwhile, according to James P. Chaplin Reconstruction is a psychoanalytic interpretation of the data in such a way.

Based on these descriptions, then the reconstruction value of the legal protection sub-district in the elections based on values of justice is Camat protection of mutations or

loss of position as a result of the elections in order to achieve neutrality in implementing the district head election of Regional Head.

As for the Reconstruction Law, Legal Protection sub-district head elections are a Values-Based Implementation of Justice is as follows:

No	Before Reconstruction	Weaknesses-weaknesses	After Reconstruction
1.	Article 70 (1) c of Law No. 10 2016 reads as follows: in a campaign involving candidates are prohibited from: c. Village Head or other title / Village and the Village or other designation / Software villages.	District and sub-district was not yet widely device specific, but very strategic sub-district authority in the election.	Article 70 (1) c of Law No. 10 2016 reads as follows: in a campaign involving candidates are prohibited from: Devices district and sub-district. Village Head or other title / Village and the Village or other designation / Device Village
2.	Article 162 (3) of Law No. 10 2016 reads: governor, regent or mayor who will perform the replacement officials in the provincial government or regency / city within a period of six (6) months from the date of the inauguration must obtain the written approval of the Minister.	Implementation of the budget is one year, and if 6 (six) months mutated or dislodged then district head has not seen its performance.	Article 162 (3) of Law No. 10 2016 reads: governor, regent or mayor who will make the turn in the provincial government office or District / Town including the post of district head / within a period of one (1) year from the date of appointment and must be approved in writing by the Minister.

Thus the researchers discovered a new theory of Novum namely Theory of Legal Protection sub-district in the implementation of the elections is an attempt concrete from the government to the safety of district head elections in that district head neutral and avoid threats, intimidation, criminal sanctions, and mutation or loss of position so that the sub-district can succeed local elections Luber and Jurdil and pressing Abstentions.

## **D. CLOSING**

### **1. Conclusions**

- a. Subdistrict role in the election still have not received adequate legal protection. Camat often received unfair treatment from the pair Balloon (Candidates) Regional Head who was a contestant elections. For example: Often Balloon particularly incumbent Regional Head / incumbent, because he felt that the sub-district is subordinate, then the balloon incumbent district head siding ask him in the elections, in the form of making efforts to influence the public to choose the balloon in the elections. If the sub-district refuses to do "tasks" because they felt it was contrary to law and justice, it does not shrink the balloon gave sanction of mutation district head to other areas up to replace / remove the sub-district office with another sub-district. There is also the phenomenon of sub-district were asked to contribute to the society in the name Balon Regional Head, Head asked to donate campaign paraphernalia, t-shirts emblazoned Balloon Regional Head, Flag, and other campaign attributes. Camat often powerless to "fight" such treatment. Ironically, if the incumbent district head to follow the wishes of the balloon, he was impressed "not neutral".
- b. Election system weaknesses directly applied in Indonesia still needs to be addressed. Direct local elections is not without problems. Direct local elections also have many pro-blem, political implications, and socio-economic impacts, whether favorable or not. In practice, a number of problems that arise in the administration of elections has its own polemics and debate space mainly on aspects of the management of elections. There are a variety of issues related to the implementation of direct elections. There are at least six (6) problems that often occur in the field, namely: the elections in Indonesia tinged with political phenomena of money and high costs, elections marred lack of neutrality and deployment of bureaucracy, Arise horizontal conflict, Sustainability political dynasty, Single Candidate in the elections, and the role of sub-district very strategic in the success of direct elections.

### **2. Implications Research Dissertation**

- a. Provide input for President, Governor, Regent / Mayor, Election Commission, Election Commission, Bawaslu and law enforcement authorities (police, prosecutor, and judge) to clarify the legal protection for sub-district head of elections based on values of justice.
- b. Legal protection of the sub-district head of elections needs to be reconstructed in order to clarify the steps subdistrict to not enter the realm of practical politics so that the sub-district as Tutors Projo, Heads of Government, and the Trustees of Parties in the District as well as coordinator of development and community empowerment is not easily transferred and removed his post so as not served as district head again and as SKPD, Head to oversee and coordinate the tasks in the areas of governance, development and community empowerment.

### **3. Recommendations**

- a. In the local elections there should be a rule that protects the district head in neutral. Therefore, the Election Commission to make proposals for legislation to protect sub-district to stay neutral in the implementation of the elections. So with the rules that protect the district head in neutral make the district head does not feel threatened by the consequences of neutrality is doing, so that is not transferred and removed from his position and not be sub-district again and in the realm of criminal law.



- b. Government and Parliament should immediately change and merekonsrtuksi Article 70 (1c) and Article 162 (3) of Act No. 10 of 2016 on the second amendment of Law No. 1 of 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election Governors, Regents and Mayors into law.
- 1) Article 70 (1c) in order to be added / inserted sub-district and subdistrict device, because sub-district has a very strategic authority in the election.
  - 2) Article 162 (3) to be raised to 1 (one) year from the date of the inauguration of the Regional Head, because the implementation of the budget is one year, so if six months mutated or dislodged then district head has not seen its performance.

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