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BASED ON THE 1945 CONSTITUTION  
IN THE CONTEXT OF REGIONAL AUTONOMY**

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# **THE REGIONAL HEAD ELECTION MODEL BASED ON THE 1945 CONSTITUTION IN THE CONTEXT OF REGIONAL AUTONOMY**

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## **ABSTRACT**

Article 18 of the Constitution of 1945, is not set explicitly on the model either local elections before the change and after the change, giving rise to multiple interpretations. Legislature to interpret the model in accordance with the local elections of political will at the time. Prior to the 1945 changes in the regulation of local government such as the Act No. 5 of 1974, No. 22 of 1999, and after the 1945 changes governed by Act No. 32 of 2004 on regional governance. Setting the local elections in the legislation are inconsistencies between laws that regulate each other electoral models vary. The inconsistency of these legal norms have implications for the implementation of regional autonomy within the system of the Republic of Indonesia. Under the decentralized form an autonomous region, the system is essentially delegated to the local government administration (the law) is given the right to administer their own affairs of the household. The goal is for people to participate in democratic governance, in order to realize social justice welfare in the area.

Key words : Implications, Local Elections, Autonomy

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## I. INTRODUCTION

1945 Constitution as the constitutional basis in the implementation of the constitutional system of Indonesia. Periodization applies in the first period of 1945 (Proclamation of the Constitution), 1945 second period (July 5, 1959 Presidential Decree) and the 1945 changes (UUDNRI 1945). In the implementation of the 1945 Constitution be interpreted in accordance with the wishes of the ruling political regime. Administration of the old order and the new order era based on the 1945 Constitution more authoritarian and centralized, leading to an unstable democracy dynamics lead to structural and social injustice.

Presented by Abdul Mukthi Fajar<sup>2</sup> in his preface Widjojanto, Saldi Isra, Marwan Mas, (editor) that:

"Historical experience of Indonesia for over half a century as an independent nation shows how been torn apart our constitutional system rules that apply or have effect, namely the 1945 period I (1945-1949), the Constitution RIS (1949-1950), the Provisional Constitution (1950-1959), the 1945 second period since the decree of the President (1959-1999), and after the 1945 Amendment first, second, third (2002) that always lead to constitutional crisis is not able to guarantee a sustainable democracy".

The moment for reform marked the collapse of the New Order, and the changes to the 1945 Constitution, one of which is the provision of local government. Changes in the provisions of Article 18 UUD 1945 to 18, 18A and 18B is a new dimension of regional governance arrangements.

The provisions of Article 18 paragraph (5) of 1945 UUDNRI that run local government autonomy, except in matters of government by law to be the affairs of the Central Government. A paradigm shift in governance from centralization to decentralization, districts more flexibility to

manage the affairs of his own household. Implications of autonomy, including in terms of determining the regional head, if it is associated with the provisions of Article 4 (1)<sup>3</sup> UUD 1945 "President of the authority of government", meaning there is no state agency other than the President who was assigned to govern. The president holds the reins of government from central government to the lowest and uninterrupted but hierarchical. Management in the implementation of the 1945 rule to determine the principles of decentralization, hence the birth of the autonomous region. In the management of government is whether the president has a say in determining the regional head or nothing at all except for administrative functions<sup>4</sup> only. In the illustrated implementation, the dynamics of democracy are not consistent in some settings the Law on Local Government. Before amendment KDH election to be part of the government's agenda, and the result of the dominance of the government, then raised dissatisfaction and injustice, the desire for change through changes in the Constitution.

After amendment of the 1945 Constitution in Article 18 paragraph (4) Governors, Regents and Mayors respectively as head of the provincial, district and municipal elected democratically. Understanding democratic raises multiple interpretations, should be studied in depth and comprehensive arrangements elections so its application can provide benefits to the democratization of the region and the well-being of local communities. According to Ibnu Tricahyo systematic and historical interpretations based on the democratic direct elections<sup>5</sup>. Moreover, it can be seen from a sociological interpretation of how the public will and facts on this issue, so it can be used as a source of law in shaping legislations, especially related to the local election issues.

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<sup>3</sup> Pasal 4 (1) UUD 1945 bahwa Presiden Republik Indonesia memegang kekuasaan pemerintahan menurut Undang- Undang Dasar.

<sup>4</sup> Ibnu Tricahyo, "Menata Manajemen Pemilihan Kepala Daerah", Makalah, Pada Lokakarya MPR

<sup>5</sup> *Ibid*,

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<sup>2</sup> Bambang Widjojanto, saldi Isra, Marwan Mas, (editor), *Konstitusi Baru Melalui Komisi Konstitusi Independen*, (Jakarta, Pustaka Sinar harapan, 2002), hlm. xxxii

Regional Head and Deputy Head in a pair selected directly by the people. Thus there is a change of paradigm shift to democracy, representative democracy partisipatif. Democracy is generally interpreted of, by and for the people, so the decision should be given access to the people to have a say. With the establishment of good relations between the regional heads of the people, then it is likely the development will be able to run well, but the fact is not so, it is very troubling to the implementation of regional autonomy. Problems can be formulated as follows: the implication of the model local elections to regional autonomy?.

## II. RESEARCH METHODOLOGY

This research is legal (normative) research examines legal materials related to the research problem, namely the rule of law and the principles of law, rule of law and the ever prevailing legal norms applicable in the future. Approach used to address the regulatory, historical, comparative law, and a conceptual interpretation of the law by using the theoretical framework of analysis as for the knife used is the theory of democratic theory, the theory of decentralization (autonomy) and the theory of elections.

Legal materials used are of primary legal materials Constitution of 1945, Act No. 32 of 2004 and regulations related to local government and local elections. Secondary legal materials in the form of literature books, research, dissertation, article. Materials tertiary legal dictionary and encyclopedia Indonesian and non-legal materials obtained through in-depth interviews to key informants. Material non-legal form of empirical data as proponent data legal materials in an analysis of research experiences to a model called the local elections based on the 1945 Constitution in the context of regional autonomy. Material law by judicial qualitative analysis, which start with the legal reasoning that is pretending to bring positivity, coherence and achieve justice.

## III. RESULTS AND DISCUSSION

### 1. Local elections in the Context of National and Local Relations Within the framework of the Unitary Republic of Indonesia.

Article 1 (1) the Constitution of the Republic of Indonesia of 1945 stipulates that; Unitary State of Indonesia is, in the form of the Republic. According to Moh. Yamin<sup>6</sup> "So form an independent Indonesian state-it is a sovereign Republic of Indonesia which is made up of schools unitarisme". Unitarisme illustrates the unity that was built through the commitment of elements of the nation. Yamin<sup>7</sup> further stated:

1. Indonesia has one sovereign state upheld by the head of state, and by the region and the people of Indonesia.
2. In Indonesia, the people of the state heads of state, central government, local government and rural community governments (state, clan, etc..) Selected east of deliberation by the people who drafted the 'state of the Indonesian people is syuriah government, government based upon deliberations between the magicians and common sense, are selected on the ideology of representation.(emphasis mine).
3. Deliberation, the selection and renewal of the mind is the basis of the appointment and termination of all state affairs.
4. Country, villages and all customary laws renewed fellowship with the rationalism and renewal date, the composition of the country as used foot bottom.
5. The central government is formed around the head of state, is divided into:
  - a. Deputy head of state;
  - b. The ministry around a ministry leader;

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<sup>6</sup> Sekretariat Negara, *Risalah Sidang BPUPKI dan PPKI*, (Jakarta: Sekneg), hlm. 23.

<sup>7</sup> *Ibid*, hlm. 17.

- c. Central hall of parliament representatives, consisting of assemblies and parliament hall.
- 6. Between the top and bottom formed the center as government area to run the affairs of the government, pangreh praja. Now repatriate powers to the state government affairs in Indonesia and throughout Indonesia for rearranged.
- 7. Indonesian people running the country division of labor on the state of decentralization or deconcentration is not familiar with federalism or state disintegration.

The Constitution indicates that Indonesia is not a federal state, therefore in Article 4 (1) UUDNRI In 1945 the President of the Republic of Indonesia shall hold the power of government according to the constitution. This gives an understanding that the President is constitutionally tasked to govern, it means the president holds the reins of government from central government to the lowest level in a hierarchy. In connection with Article 18 of the local government UUDNRI Year 1945 set the division of the area and the government implemented the principle of local autonomy and the duty of assistance. Thus the birth of the autonomous regions the right to control and manage the affairs of local government / its own domestic affairs.

Observing the provisions of Article 18 UUDNRI Tahun 1945 does not regulate how the President as the holder of the power of government in the Republic of Indonesia, for example in determining the Regional Head. Since the Constitution does not set it, therefore can not contribute to the President to determine the head area except administrative functions only. Should be in the context of the presidential unitary authority of government under the constitution, but Article 18 does not set it up so cut off from government authorities, particularly in terms of determining the head area. Thus the relationship between central and local governments are not clear in terms of determining the regional head, merely an

administrative function. Related to these issues is different from before the 1945 constitutional change expressly stipulated in the 1945 Constitution explanation, that in governing the state, power and responsibility is in the hands of the President (concentration of power and responsibility upon the President).

## **2. Model Implications the regional head election to regional autonomy before the 1945 constitutional amendment.**

- a. Implications of the model regional head election based on Act No. 5 of 1974.

Elections in 1971 produced the DPR and MPR, the agency will establish a new chapter in local governance arrangements. In 1973, the Assembly issued Decree No. II / MPR/1973 about the Guidelines, the relevant contents policy to be followed in the administration of local government that: "in order to expedite the implementation of development scattered throughout the country, and in fostering political stability and national unity of the harmonious relations between the central and areas on the basis of the integrity of the unitary state of Indonesia, is directed at the real implementation of regional autonomy and responsibility, which can ensure progress and development, and implemented together with the deconcentration ". As translation is then formed MPR decree Act No. 5 Year 1974 on Regional Governance Principles.

Article 16 (1) Level II Regional Head nominated and elected by the legislatures of at least 3 (three) and a maximum of 5 (five) candidates who have discussed and agreed between the head of the Regional Representatives Council / Leadership warring factions with the Governor's head area. Paragraph (2) the election referred to in subsection (1) of this article submitted by the legislatures in question to the Minister of Home Affairs through the Governor's regional head at least 2 (two) persons to be appointed one of them. In this appointment, the President or the Secretary of the Interior is not tied to the number of votes obtained in elections in the House of Representatives.

Decentralization of political authority to give local authorities should therefore legislatures in selecting candidates for head region is the inherent right of local agencies, so that if the mechanism of the recruitment is done by democratic mechanisms. Then the President should be consistent, and must respect the election results by the Regional Representative Council.

Act No. 5 of 1974, legally normative democratic enough, but the implementation is not very democratic central government domination donominan. This can be seen with the declared real autonomy and responsibility, but in the implementation of decentralization to deconcentration. Thus the policy of decentralization in the implementation of the new order in the pendulum of centralization.

Elections did not reflect the democratic principle is proposed and selected by legislatures, sometimes only a formality central intervention is very strong, as seen from the policy of army officers to be the head area. This policy implies the death of democracy in the region, local civil society, community leaders do not have less chance when faced with candidates of the Armed Forces. So often candidates become known and candidate companion. Because normative legislatures have proposed two people to lift one of them, authoritarian power of the central government with regard to the number of votes, this deadly democratic principles.

Implications of the conceptual model of regional head election based on Act No. 5 of 1974 on regional autonomy, namely:

1. Central and local relations are hierarchical relations, weak decentralization, deconcentration strong. It is difficult to distinguish whether decentralization or deconcentration, the implementation of regional autonomy, the central government being so dominant, everyone deconcentration, what is the will of the central area. Not infrequently or development projects in the region, the head of the local area do not know, because the center of the plan, implement the program. It is

not uncommon that built the project be redundant, because it does not suit the needs of local communities.

2. Very limited regional authority, among other things, financial management is a form of centralization, the center depends on the setting, and regional initiatives are not developed. Autonomous regions, have difficulty in planning, setting policy with regard to the affairs of the household area. In a centralized system is not obvious limitation affairs division. In the implementation of the more dominant interests to determine whether it matters, provincial, or district. Whereas Article 11 Act No. 5 of 1974 states that the emphasis is on regional autonomy level II, and provisions were set by government regulation. Because the benchmark interest until this law repealed almost new administration issued regulations neighbor emphasis on regional autonomy level II.
3. No active public participation, democratization at the local level (local) congestion, while a fundamental decentralization include political decentralization, local governance is thus based on the principle of democracy.
4. Very strict supervision, supervision in the form of preventive, repressive and general supervision.
5. Natural resources are managed by the center, so that the area becomes structurally poor.
6. Regional autonomy is not a right but rather the duty, as the implementation of real autonomy and responsibility.
7. Headmaster of a central area than the legislature, because according to Act No. 5 of 1974 as the head of the local government administrator, and the administrator of community development administrator. Enormous power tend to abuse of power (abuse of power), thus not running a democratic mechanism

and tend to be ignored. Seen in terms of providing accountability statement regional head, in this era a lot of the spotlight, as the head of the area tend to only convey the central government or superiors, compared to the legislatures. If submitted to the House of Representatives, it was thought that it was just a formality legislatures can not deny or comment on description of such liability. This is because legislatures do not have the sovereignty to fill the position of head of the region, the President or the Secretary of the Interior did not see the number of ballots by the election results of the Regional Representatives Council.

8. Position Representative Council is very weak, the tendency to funnel government and the certifier (stamp) any decision taken by the government. As a result, aspirations and creativity become developed, the line blocked, the dynamics of democratization in the region to become paralyzed.
9. Prominent areas difficult to become a regional leader, when it does not enter the circle of power as it is in the military and Golkar girder. The regime was very strong, so that democracy and the sovereignty of the people die, and only at the level of values. Not uncommon in this era, people / community leaders are voicing the interests of the people, but contrary to government policy, PKI, and can be simply abolished the earth.

**b. Implications of the model the regional head election based on Act No. 22 of 1999.**

Citing a term uttered by President Soeharto in his speech scurrilous profanity encouragement to constitutional issues and public affairs he said "storm definitely passed." While connected to the storm authoritarian, shackles democratization, must pass when entering a new phase

dynamics of democratization began to stretch towards democratic governance.

The turn of Act No. 5 Year 1974 on Regional Governance Principles replaced by Act No. 22 of 1999, a new round of democratic local governance and decentralization completely handed over by the central government, regional government based on broad autonomy. Thus decentralization hand administration of the area, then the area in running the government based on the 1945 Constitution.

Sovereignty of the people of the region are fully recognized by Act No. 22 of 1999. This includes regional head election handed over to the local communities. Article 34 (1) Act No. 22 of 1999 stipulates that filling the position of head and deputy head of the region conducted by the regional parliament through elections simultaneously. Paragraph (2) candidates of head and deputy regional head candidates established by the Council of Representatives through the stages of nomination and election.

Consequences selected by the Regional Representatives Council, then under Article 31 (2) Act No. 22 of 1999 is that, in exercising the authority as head of the regional governor responsible to the provincial legislatures. Procedures established by the regulatory liability order the Regional Representatives Council in accordance with the guidelines set by the Government. Furthermore, Article 32 stipulates that in exercising authority Regent / Mayor as Regional Head responsible to the House of Representatives District / City, accountability procedures established by regulatory order House of Representatives District / City.

If the provision is adequate democratic scrutiny, but there are some drawbacks, resulting in implementation raises many problems. Based on the organization of local elections fully controlled unanimously by the House of Representatives, the people judging the model regional head election through undemocratic system of Representatives, which resulted in a lot of irregularities and cause injustice.

Implications of the conceptual model of regional head election based on Act No. 22 of 1999 on regional autonomy are:

1. Relationship between the center and the regions, not effective, such as the functions of coordination, decentralization, strong with broad autonomy. The President can not reach out and participate in setting the policy direction of regional heads.
2. Very loose supervision, supervision over local regulations and Decision of the region through the repressive forms of control, which is submitted to the Government no later than 15 days after enactment. If the area objected to the decision of the cancellation regulations, it may apply to the Supreme Court, as provided for in section 113 dam 114 Nomo Act 22 of 1999. The process of legislation and regulation in the area of regulating and organizing the housekeeping area no longer have to be approved by the central government. In order to effectively and efficiently principle quite good and democratic, but it is not offset by the readiness and professionalism of the members of the Regional Representatives Council at the time, so it is not just hundreds or even thousands of regulations across Indonesia as opposed to the higher regulatory. This shows democratization was not merely seen from the systems and procedures alone but should also look at the readiness of human resources implementing democracy itself must also be ready and have the intelligence capabilities, policies quite where advantages and disadvantages of this balanced mutual fairness as expressed Aristotle.
3. Participate is low, despite the recognition of the sovereignty of the people of the area to determine the leader democratically. Recruitment Look local public officials is left entirely to the Regional

Representatives Council and no further intervention center. Nomination of candidates and recruitment Regional Head and Deputy Head of the domain completely legislatures people are not involved. Besides the recruitment procedure is not performed in an open / transparent, then the tendency to distortion and just a formality by negotiations through the intervention of political party management both at local and central level, and the widespread occurrence of money politics in nominating regional head and deputy regional head.

4. The authority is very high, with the regional autonomy have freedom authorities in planning, finance and development to bring regional initiatives. The implementation of regional autonomy hierarchy provincial and district / city. The emphasis was on regional autonomy district / city, by contact with the public. The area was an incarnation of the legal community who have boundaries, self-government. It is appropriate if it is local autonomy in urban districts. This will affect the interests of the community are met, increasing the capacity of local governments to take care of the public interest and public service, utilization and management of natural resource potential of the area for development and welfare of sustainable and equitable. In the implementation of regional initiatives emerging trend contrary to the policy of the Centre.
5. A shift in the position of the Regional Representatives Council, the Institute has become a very dominant institution of the head area. Regional heads and deputy regional heads who obtain the most votes determined by the Regional Representatives Council and approved by the President. It shows the head of regional legitimacy depends on legislatures because the



setting is the regional head of the Regional Representative Council.

6. There is no synchronization between the central system of government and local governments, where the central government as a presidential system of government in the region adopt a parliamentary system. Normatively seen from accountability to the Regional Head of the Regional Representatives Council and propose the dismissal of the head and deputy head of the region.
7. Relationship With Head Regional Representative Council, vertical relationships, resulting in very dependence Regional Head To Regional Representatives Council, regional head trend can not be rejected. When the request of the House of Representatives prepared to risk not followed by an attack on his best time definite regional chief accountability report is rejected / not accepted, this means that the head of the proposed area is ready to quit.

### **3. Model Implications the regional head election to regional autonomy after of the 1945 Constitution amendement.**

The dynamics of democratization goes hand in hand with the passage of time, which is influenced and determined by political decisions at any given moment. Journey of democracy in local government system describes the dynamics are so dynamic, so that local democracy is always changing and always looking for an ideal shape. Periodization validity of of the 1945 Constitution as the constitutional basis of regional government to provide color or a different form of democracy, and the resulting dissatisfaction and injustice. These conditions resulted in the political decision to amend the of the 1945 Constitution.

After a change of the Constitution, it is about the local government under Article 18.18 A, 18B Constitution of the Republic of Indonesia Year 1945 (UUDNRI Year 1945). In Article 18 paragraph (4) provides that the Governor, regents and mayors, respectively

as head of government of the province, district, and municipal elected democratically. As described on the face of democracy, interpreted by the legislators is direct election, thereby implemented in Act No. 32 of 2004 as amendment Act No. 22 of 1999 on Regional Government.

The governance arrangements as a translation of Article 18 paragraph (4) UUDNRI In 1945, stipulated in Act No. 32 of 2004 and has undergone several revisions, recent Act No. 12 of 2008 regarding the second Act Number 32 of 2004 on Regional Government. Implementing regulations, the Government Regulation No. 6 of 2005 and has undergone several changes in the Government Regulation Number 17 of 2005 on Amendment PP. Number 6 of 2005, PP. Number 25 of 2007 on Amendment PP. Number 6 of 2005, PP. Number 49 of 2008 on the amendment of PP. Number 6 of 2005 on the Election, Appointment and Dismissal of Regional Head and Deputy Head. This provision stipulates that the Head and Deputy Head of the local area by the people. Setting direct regional head elections conceptual implications:

#### **a. President relationships with the Regional Head.**

Understanding the Unitary Republic of Indonesia shall be construed as a whole, not just a partial view, therefore, in terms of regional autonomy should remain within the framework of the Unitary Republic of Indonesia. In the unitary authority is essentially one that is at the center of government and hierarchy to the low, in this case of course the center is headed by the President of the incumbent government as a whole. Since it is impossible to carry it out properly then it can be seen in the Constitution of of the 1945 Constitution Article 4, paragraph (2) in performing duties assisted by a vice president. Furthermore, it is functionally the President also not able to run it yourself, then in Article 17 UUD 1945<sup>8</sup> aided by the minister.

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<sup>8</sup> (1) Presiden dibantu oleh menteri-menteri negara.  
(2) Menteri-menteri itu diangkat dan diberhentikan oleh Presiden. (3) Setiap menteri membidangi urusan tertentu dalam pemerintahan. (4) Pembentukan, pengubahan, dan pembubaran kementerian negara diatur dalam undang-undang.

Observing the provisions UUDNRI conceptually in 1945 set out in the Unitary State UUDNRI exists a broken chain, should have been when speaking of unity then no link is disconnected. It can be seen from the above provisions of the president is assisted by the vice president, in exercising the areas of government affairs assisted by the Minister but in terms of governance in areas not otherwise supported by the regional head. That is according to the author of the republic there are two layers of government that there is no link because it is all distributed to the regions. therefore it would be difficult for the President to intervene when the region pursue policies contrary to the principles of national policy.

Observing the provisions of Article 18, that the country is already divided out over the provinces, districts and cities as well as having local government, the regional government run according to the principles of autonomy and assistance tasks. Therefore, according to the author of the pattern established by the provisions UUDNRI In 1945 the relationship between the center and the regions are coordinating pattern. Though the concept of a unitary state in addition to coordination patterns, functional patterns remain, since the authority of state government macro RI is the responsibility of the central government. Therefore phrase should be included on the relationship of President to the head region in the provision of the Constitution (the Constitution) is not at the level of law.

Act No. 32 of 2004 regulate the affairs of the center is very limited as provided for in Article 10 paragraph (3)<sup>9</sup>, while the running broad autonomy to regulate and manage their own affairs based on the principle of autonomy and the duty of assistance. Envisaged that only a limited central authority set forth in the law means that it is beyond the authority of the provincial<sup>10</sup> nor the district / city authority<sup>11</sup>

<sup>9</sup> Urusan pemerintahan yang menjadi urusan Pemerintah sebagaimana dimaksud pada ayat (1) meliputi: a) politik luar negeri; b) pertahanan; c) keamanan; d) yustisi; e) moneter dan fiskal nasional; dan f) agama.

<sup>10</sup> Pasal 13 (1) Kewenangan Pemerintahan Propinsi 1. perencanaan dan pengendalian pembangunan; 2. perencanaan, pemanfaatan, dan pengawasan tata ruang; 3. penyelenggaraan ketertiban umum dan ketentraman masyarakat; 4. penyediaan sarana dan prasarana umum; 5.

is divided into compulsory and optional covers government affairs actually exists and has the potential to improve the welfare of the people in accordance with the conditions, peculiarities, and the potential in the regions concerned.

Relationship with the President in the context of regional heads direct local elections as stipulated in Act No. 32 of 2004, the regional head and deputy regional head nominated by a political party or coalition of political parties, as well as President and Vice President by of the 1945 Constitution was nominated by political party or coalition of political parties. In terms of democratic legitimacy they gain popular legitimacy. It can deliver a performance is a strength and a weakness if it is not explicitly stated in the constitution that the head area basically as a presidential aide in the area within the unitary state concept. Because if the president and vice president and their regional head and deputy regional head was nominated by the same political party, the political synergy can be guaranteed, but when the head of the area nominated by a political party or a coalition of different political parties it would be difficult to synergize policy of different parties.

Hereinafter the relationship between the head area with the other heads of

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penanganan bidang kesehatan; 6. penyelenggaraan pendidikan dan alokasi sumber daya manusia potensial; 7. penanggulangan masalah sosial lintas kabupaten/kota; 8. pelayanan bidang ketenagakerjaan lintas kabupaten/kota; 9. fasilitasi pengembangan koperasi, usaha kecil, dan menengah termasuk lintas kabupaten/kota; 10. pengendalian lingkungan hidup; 11. pelayanan pertanahan termasuk lintas kabupaten/kota; 12. pelayanan kependudukan, dan catatan sipil; 13. pelayanan administrasi umum pemerintahan; 14. pelayanan administrasi penanaman modal termasuk lintas kabupaten/kota; 15. penyelenggaraan pelayanan dasar lainnya yang belum dapat dilaksanakan oleh kabupaten/kota; 16. urusan wajib lainnya yang diamanatkan oleh peraturan perundang-undangan.

<sup>11</sup> Pasal 14 (1) Kewenangan pemerintahan Kabupaten/kota 1) perencanaan dan pengendalian pembangunan; 2) perencanaan, pemanfaatan, dan pengawasan tata ruang; 3) penyelenggaraan ketertiban umum dan ketentraman masyarakat; 4) penyediaan sarana dan prasarana umum; 5) penanganan bidang kesehatan; 6) penyelenggaraan pendidikan; 7) penanggulangan masalah sosial; 8) pelayanan bidang ketenagakerjaan; 9) fasilitasi pengembangan koperasi, usaha kecil dan menengah; 10) pengendalian lingkungan hidup; 11) pelayanan pertanahan; 12) pelayanan kependudukan, dan catatan sipil; 13) pelayanan administrasi umum pemerintahan; 14) pelayanan administrasi penanaman modal; 15) penyelenggaraan pelayanan dasar lainnya; dan 16) urusan wajib lainnya yang diamanatkan oleh peraturan perundang-undangan.

regions within a province, for example, the governor of the regent / mayor or between the regent / mayor does not reflect an integrated part in one province. Each as referring to the division of the autonomous region set out in the of the 1945 Constitution and set out in Act No. 32 of 2004. Each has their respective domains, and hold on to their autonomy. Coordination does not work properly due ego sectoral caused understanding sectoral of democracy as well. That between the Governor and Regent / Mayor has an equal footing because both elected by the people, and thus has the same legitimacy. While as noted in advance that the umbrella constitution does not expressly set point link the President, Governor and Regent / Mayor in the governance system of the Republic of Indonesia.

Model of direct local elections implies that the President can not come into play in determining the regional head, therefore the President not to take action if the head of the region pursue policies contrary to the policy center. Because of these conditions, then issued Government Regulation No. 16 of 2010 on the granting of authority to the governor to control the area, so that the relationship with the regional center is not effective.

Monitoring of the area carried out repressive laws as provided in Article 145, legislation that has been established if contrary to the public interest and the legislation can be canceled by the Government. While in the case of preventive surveillance carried out on the draft budgets of local regulations as stipulated in Article 185 Act No. 32 of 2004 that the draft provincial regulations on an agreed budget and the draft Regulation on the translation of budget before Governor appointed by the Governor no later than 3 (three ) today submitted to the Secretary of the Interior to be evaluated. So is the draft budget the district / city before approved Article 186 must be submitted to the Governor to be evaluated. It is seen that that should be evaluated are local regulations related to the budget, but the fact that all regulations are evaluated. This shows that there is an effort

to strengthen the supervision of the shift from repression to prevention.

## **b. Relations Regional Head and Deputy Head**

Applicability of Act No. 32 of 2004 charging system changes the position of Regional Head and Deputy Head, and therefore in the context of the general elections of regional heads, leadership patterns of the package if the first single is called *bi* means it must be in harmony because they must be solid. To establish a harmonious relationship should begin the process of nominating candidates from regional head and deputy regional head. for example, they both have the effect of strengthening the support base in the pockets of votes to win the maximum number of votes in the election. The evidence suggests there is in performing authority unclear what the deputy head. It is a trigger disharmony between the two. As noted in the discussion Dede Yusuf<sup>12</sup> research agency within Department of State Development. obscurity authority possessed by the deputy head to be one important factor in the occurrence of disharmony between the Regional Head and Deputy Head.

According to Warsito based on the results of research conducted to mention that the conflict between the head region and representatives spread across 26 regions of Central Java as a sample. The conflict is the case because there are ideological differences in development planning. But the conflict was wrapped in a harmonious false, because the Javanese culture *Ewu pakewu*<sup>13</sup>.

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<sup>12</sup> Dalam sebuah diskusi rutin di Badan Litbang Depdagri, Wakil Gubernur Jawa Barat, Dede Yusuf, mengemukakan, kewenangan Wakil Kepala Daerah sebagaimana tercantum dalam Pasal 26 UU Nomor 32 Tahun 2004 tentang Pemerintahan Daerah, dianggap sangat terbatas dan cenderung sumir. Akibatnya, memicu hubungan yang tidak harmonis antara kepala daerah dan wakilnya. Padahal, pemilihan kepala daerah dan wakilnya dilakukan secara satu paket. (<http://www.indonesia-monitor.com/main/index.php>)

<sup>13</sup> Sumber; <http://www.fisip.undip.ac.id/index.php?>. Diakses tanggal 12 Maret 2010. Survei dilaksanakan dengan wawancara mendalam terhadap 114 informan yang terdiri atas 7% kepala daerah/wakil, 32% birokrat, 16% anggota DPRD, 16% pengurus parpol, 10% aktivis LSM, 7% pengurus ormas, 10% ketua/anggota KPU di daerah, dan 1% organisasi profesi. Daerah yang diteliti meliputi Kabupaten Kudus,

Directorate General of Regional Autonomy (Autonomy) Ministry of Domestic Made Suwandi said, the model candidate nomination package heads and deputy regional head that carried a political party or a political party regarded as a source of conflict between the head area with his deputy. Regional Head and Deputy Head from different parties often make both have different agendas and interests. conflict affects the apparatus area, making the bureaucracy and fragmented local officials<sup>14</sup>.

### c. Arrangement Democratization in the Region.

Democracy understanding of the people, by the people and for the people, which has been known since the days of Greece, up to the present is always changing in accordance with the conditions desired by the people themselves. Of course the people who can give you the color or hue of the democracy it is the people who occupy formally to influence the formation of laws on democracy itself.

Declared local democracy through direct elections, the implementation of political decentralization that gives independence to the area to do the cadre of political elites can eventually build up area. Direct elections, the people directly involved in choosing leaders. Direct elections for the leadership training is the vehicle of local elites to enhance the capabilities and professionalism in formulating and making policies, anticipate, cope with problems in society, political communication with the public. Based on these experiences, in turn, is expected to be born politicians or powerful leaders who can compete at the national level<sup>15</sup>.

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Kabupaten Pati, Kabupaten Demak, Kabupaten Purworejo, Kabupaten Pemalang, Kabupaten Banjarnegara, Kabupaten Purbalingga, Kabupaten Kebumen, Kabupaten Boyolali, Kabupaten Pekalongan, Kota Tegal, Kabupaten Karanganyar, Kabupaten Magelang, Kabupaten Wonosobo, Kabupaten Wonogiri, Kabupaten Semarang, Kabupaten Jepara, Kabupaten Sragen, Kota Semarang, Kabupaten Kendal, Kabupaten Brebes, Kota Pekalongan, Kota Salatiga, Kabupaten Blora, Kabupaten Batang, dan Kabupaten Grobogan.

<sup>14</sup> Made swandi, dalam diskusi Mendagri Lontarkan Wacana Model Pilkada, <http://www.RadalTegal.com/index.php>.

<sup>15</sup> Lili Romli, *Pilkada Langsung, Otonomi Daerah dan Demokrasi Lokal*, Analisis CSIS, 2005, Vol. 34, No. 3.

Direct elections could also create political stability and governance at the local level. This is because the elected Regional Head strong gain legitimacy from the people directly, so the dismissal of the action officer who is directly elected by the people can not be done by the Regional Representatives Council<sup>16</sup>.

To realize the democratic elections, political parties should make a breakthrough in order to open up opportunities for the best people. But in contrast to the fact, that the trend is starting to look as DPP candidate the force, so if interested in running for the head area and have a lot of money / capital, do not bother, stay DPP affairs rapidly approaching completion<sup>17</sup>. It's not all prospective proposers party requires an initial deposit "initial capital" that the amount varies. But the nomination ticket almost definitely not obtainable free of charge<sup>18</sup>.

Not only political parties, voters also suffering from pragmatic political culture and transactional. The majority of people mean giving money as a "representation of goodness" (a symbol of goodness). Yet, should the candidate voters will tackle them miserable<sup>19</sup>. There tends to be a pragmatic change in public attitudes, and they think no rationalist again, only paid 50,000 to 100,000, sovereignty spout and shackled<sup>20</sup> for five years during the tenure of head and deputy head of the region.

Observing the implementation of direct elections, which had been run in recent years, gives an overview of false democratization. On one side of expectations to be achieved by the people who chose to be obtained directly leadership quality leadership, accountability, because it recognizes and individual rights in a democracy. But the fact of the recognition of individual rights fulfilled the meaning of

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<sup>16</sup> Suharizal, *Implikasi Pemilihan Kepala Daerah Langsung Terhadap Pertumbuhan Demokrasi dan Jalannya Pemerintahan di Daerah*, (Disertasi Unpad, 2010), hlm. 342.

<sup>17</sup> Moh. Alifuddin, *Berdemokrasi Panduan Praktis Perilaku Demokratis*, (Jakarta: Magnascript Publishing, 2012), hlm. 171- 172.

<sup>18</sup> *Ibid*, hlm. 173.

<sup>19</sup> Y F.Ansy Lema, *Pilkada Oleh DPRD*, <http://www.kpud-pasuruankab.go.id/index.php>, tgl 17/07.2012.

<sup>20</sup> "Amancik," *Kedaulatan Yang Tergadai dan Terbelenggu*, Jurnal Konstitusi Vol.IV, No. 1, Juni 2011.

democracy, but of its goals, benefits and quality of democracy does not meet the target. Community participation as well as the essence of democracy, but the most important how to achieve social justice welfare.

Direct elections prone to conflict, conflict refers to the horizontal groups in society, both organized and unorganized. These conflicts occur because of differences in interests and perceptions that result in clashes of opinion, such as debates, polemics, and the like)<sup>21</sup>. Due to the most commonly perceived as a conflict between people and institutions organizing local elections (Election Commission) deemed unfair, neutral, engineering the vote, the main target will be destroyed. There have been large losses amok period, for example, in Kaur Bengkulu in 2005 how many public facilities and government burned. Also in Mamuju, Tanah Toraja, Gowa and Tuban<sup>22</sup>. Due amok period does little good government assets (Pendopo District, Office of the Election Commission, Golkar DPD Sektartariat Tuban and personal assets candidate head of the fire area eg private homes, hotels Mustika, and Building 99<sup>23</sup>. Election of regional heads fundamental views of the benefits to regional autonomy and public welfare. therefore need to be assessed and considered wise and rational, not merely selecting the right emphasis on the recognition, but that is the essence of democracy over its mouth prosperity and social justice for all people.

#### d. The trend Spending budget Very Large

One reason for opposition to the electoral system through a representative due to rampant money politics in the legislative area (legislatures). After running the system direct local elections, the question whether the system is no greater

<sup>21</sup> Syamsuddin Haris, et.al. Desentralisasi dan Otonomi, Naskah akademik dari (Jakarta: LIPI, 2004), hlm. 166

<sup>22</sup> Helmy Mochtar, *Politik Lokal dan Industrialisasi*, (Malang: UB Press, 2011), hlm. 163.

<sup>23</sup> *Ibid*

and greater political money? like the old saying "out of the mouth of the crocodile's mouth fell tiger."

Implementation of democratic elections directly, if seen a budget that will be used two sources, namely the government's budget<sup>24</sup> and the budgets of candidates. The government's budget is used to finance the implementation that is used by the Election Commission and the supervisory committee elections of regional heads. Besides the larger funds are funds of candidates elapsed areas head and deputy regional head for winning the competition Election. As an illustration of the election budget recap for some areas of the General Election of 2010 was held at the 31 (thirty-one) of the province, except Jakarta and Aceh Special Region. Election ever held in North Sumatra as many as 22 districts / cities. While the least is the province of Central Kalimantan and West Sulawesi each two (2) District / City.

Recapitulation Budget

No.	Province	The number of District / Municipal Election
1	Sumatera Utara	22
2	Papua	21
3	Jawa Timur	18
4	Jawa Tengah	17
5	Sumatera Barat*	13
6	Sulawesi Selatan	11
7	Lampung	10
8	Papua Barat	9
9	Bengkulu*	9
10	Nusa Tenggara Timur	8
11	Maluku Utara	8
12	Kalimantan Selatan*	7
13	Sulawesi Utara*	7
14	Nusa Tenggara Barat	7
15	Kalimantan Barat	6
16	Kalimantan Timur	6

<sup>24</sup> Pasal 112 UU. No. 32 Tahun 2004, Biaya kegiatan Pemilihan kepala daerah dan wakil kepala daerah dibebankan pada APBD.

17	Bali	6	can listen Rp 413.652.530	Gamawan Fauzi
18	Sumatera Selatan	5	said that a Rp 9.600.000.000	Official Opinions range
19	Jawa Barat	5	from Rp. 80 million dollars, while the regents	
20	Sulawesi Tengah	5	and mayors about 60 million	
21	Sulawesi Tenggara	5	said it was necessary to study whether this	
22	Riau	4	democratic welfare of the people <sup>27</sup> . Based	
23	Kepulauan Babel	4	on simple logic funds expended must be	
24	Banten	4	returned, then the question arises where	
25	Maluku	4	that big refund within 5 years. If only expect	
26	Jambi*	3	from what could possibly be covered payroll	
27	Kepulauan Riau*	3	expenses incurred so great at running.	
28	DIY	3	During his time as the official revenue by 60	
29	Gorontalo	3	months multiplied by 60 million new 3.6	
30	Kalimantan Tengah*	2	billion, (3.6) M residual weakness from?,	
31	Sulawesi Barat	2	When many candidates who are spending up	
			to 30 M. Rp 23.500.000.000	

#### Provincial Election

Sumber: Rekapitulasi Alokasi Anggaran Pemilukada Tahun 2010 (Bahan RDP Komisi II DPR RI dengan Mendagri, KPU dan Bawaslu, 31 Mei 2010, diolah).

The elections of regional heads had been held in Jakarta in July 2012 the total funds estimated 258 billion, in the first round spent \$ 199 billion, and the estimated 59 billion second round will be held in september 2012. Hereinafter suggested I Gusti Putu Artha<sup>25</sup> should be recognized, elections cost is very high. The highest score presumably still held local elections in East Java 2008 with repeat voting nearly Rp 800 billion. Currently proclaimed Papua cost up to Rp 500 billion. If it is assumed that the lowest number (based on experience) for the election of district / city and Rp 21 billion for provincial elections Rp 130 billion, the total cost incurred during the five-year holding local elections in 497 districts / cities and 33 provinces: USD 11.307 trillion. Not to get in here costs prepaid and postpaid also issued candidates, supporters, and sympathizers independently<sup>26</sup>.

Based on the data that there is so much funding for democratic elections directly, the fund is wasted is not worth the salary income plus-fee legal fees to be received by the Governor, the Regent / Mayor. Based on the information obtained

The excesses of direct elections with money politics was terrible because the pull is very strong vortex brings the tendency toward corrupt and justifies destination by any means. The correlation of the amount of funds issued by regional head candidates for winning the local elections, with the large number of heads of the regions involved corruption is very significant. As the data presented by the Ministry of the Interior from 2004 to 2011 recorded 155 cases of corruption lodged Regional Head: 17 were governor. The figure 173 is equal to 32.6 percent of the 530 (Governors, Regents and Mayors) in Indonesia.

Models Direct elections have been dragging this nation in danger in the near vortex that will destroy the joints or the values of the nation of Indonesia. People have believed that elections are a showcase for the money, so the democratic election system built in the immediate area is a mere formal democracy, which forms a good owner attitudes irrational (irrational vote) and transactional democracy, not based on substantive democracy, which form attitude of rational good owner (rational vote).

<sup>25</sup> Anggota KPU 2007-2012,

<http://budisansblog.blogspot.com/2012/05/rekonstruksi-sistem-pilkada.html>, diunduh, jam 5.14 tgl 29/7/2012.

<sup>26</sup> *Ibid*,

<http://budisansblog.blogspot.com/2012/05/rekonstruksi-sistem-pilkada.html>, tgl 29/7/2012

<sup>27</sup> Acara TV one, tanggal 29/07/2012

#### IV. CONCLUSION.

##### a. Model Implications the regional head election to regional autonomy before the 1945 constitutional amendment.

1. Relationships are hierarchical central and local, regional centers will, except in the Act. 22 of 1999
2. The authority of the area is very limited, except during Act.No. 22 of 1999 more lax.
3. Strict supervision carried center, except the Act.No. 22 of 1999. Decentralization of government affairs tend not clear.
4. Participation is low because of the dominance of government and dominated legislatures.
5. Central control of all natural resources, except the Act.No.22 of 1999.
6. The tendency of government is authoritarian character.
7. More dominant regional head of the Regional Representatives Council, except in the Regional Representatives Council Act.No.22 of 1999 more dominant.
8. democratization clogged

##### b. Model Implications the regional head election to regional autonomy after the 1945 constitutional amendment.

1. Relationship between the center and regions is reflected in the authority of the President and KHD relationship becomes blurred. Supervision repressive towards preventive, freedom strong regional authority, strong community participation, and even tend to be excessive, and anarchists.
2. Relations Regional Head and Deputy Head of the area tend to be harmonious.
3. Cost trends huge local elections.
4. Tendencies arising conflicts and shifting values in society in the region

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