

Local Governments' Head Election in Indonesia: A Proposal for Asymmetric Model

Ratih Listyana Chandra*

University of Jember, Jember, Indonesia

ABSTRACT: Indonesia has experienced the dynamics of the law on the local governments' head elections. Various mechanisms have been implemented to obtain the ideal model for filling executive positions at the local level. Unfortunately, the government efforts have yet to deliver optimal results. The irregularity of the legal dynamics also eventually caused various Government instability to corruption, post-electoral conflicts, and the high number of disputes over the local election results to the Constitutional Court is evidence of the imperfection of the mechanism adopted by the government. Furthermore, the costs that must be allocated to organize an election are quite high, which is different from the local election results. Moreover, the long process with the tendency of forced candidates produced corrupt and incompetent leaders. Sharing partnerships between the head and deputy of the local government became another problem that is quite a concern in implementing local elections in Indonesia. Thus, this paper examines the ideal model of the head of local government elections in Indonesia. This research focuses on the dynamics of the legislation and regulation on the head of local government elections in Indonesia. The research method applied is normative juridical legal research. The data collection technique employed is the study of documents and literature on secondary data in the form of primary, secondary, and tertiary legal materials. As a result, this study concludes that the ideal model for filling the position of the local head in Indonesia is an asymmetrical– compromise.

KEYWORDS: Asymmetrical Election, Compromise, Election, Local Election, Local Government.



Copyright © 2023 by Author(s)

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

HOW TO CITE:

Chandra, Ratih Listyana, "*Local Governments' Head Election in Indonesia: A Proposal for Asymmetric Model*" (2023) 3:1 Jurnal Kajian Pembaruan Hukum 27-60. DOI: <<https://doi.org/10.19184/jkph.v3i1.31190>>.

Submitted: 15/05/2022 Reviewed: 03/11/2022 Revised: 16/03/2023 Accepted: 12/04/2023

* Corresponding author's e-mail: erelce@yahoo.com

I. INTRODUCTION

Article 18(4) of the 1945 Constitution of the Republic of Indonesia stipulates that governors, regents, and mayors are “democratically elected”.¹ It is different for determining the member of the Local People’s Representative Assembly or *Dewan Perwakilan Rakyat Daerah* (DPRD) as referred to in Article 18(3), as they are elected through general elections. The difference in the model of the mechanism for filling this position creates obstacles in local government administration. While the term “democratically elected” provides two options, whether through direct or indirect form, as the Constitution gives the legislative branch to decide, Local Government Law 32/2004 was promulgated that considered the direct election.² Thus, local heads are no longer elected by DPRD’s members.³ However, they are elected directly by the people in the form of local elections, where the mechanism for this election resembles the general elections.⁴ This term has been consistently interpreted as the direct form as also strengthened by Government Regulation 6/2005 on the election, ratification of appointments, and dismissal of head and deputy of local governments. To support the application of these direct elections, the government issued the Government Regulation in lieu of Law 3/2005 and Government Regulation 17/2005 on the amendment to Government Regulation 6/2005.⁵

¹ Muhammad Bahrul Ulum, “How Democracy is Election? Reassessing Article 18 (4) Of The 1945 Constitution and Its Implication to The Regional Head Election in Indonesia” (2019) 8:2 Jurnal Hukum dan Peradilan 315–332.

² Muhadam Labolo & Muhammad Afif Hamka, “Reconsidering the Indirect Elections for the Head of Region, Response towards the Current Direct Democratisation Mechanism System in Indonesia” (2012) 8:13 Asian Social Science 1–8 at 2-3.

³ Vicko Taniady, “Optimalisasi Pembatasan Dana Kampanye Pemilihan Umum: Studi Perbandingan Indonesia dan Selandia Baru” (2021) 3:2 Jurnal Inovasi Ilmu Sosial dan Politik (JISoP) 91–104 at 93-96.

⁴ Article 56(1) of Local Government Law 32/2004 stipulates: “Heads of regions and Deputy local heads are elected in one pair of candidates which is carried out democratically based on the principles of direct, general, free, confidential, honest and fair.

⁵ Yulia Susantri, “Comparison Of Election Of Local Head Before And After Amendment To The 1945 Constitution” (2022) 6:1 Syiah Kuala Law Journal 27–39.

Changes to the mechanism for determining regional heads and deputy regional heads have a further process. After enacting Government Regulation 17/2005, the government amended it to Government Regulation 25/2007, followed by its amendment to Government Regulation 49/2008 and Government Regulation 78/2012. In essence, these frequent changes dealt with regulating of the mechanism for filling the position of local government's head.⁶

Talking about changes that often occur regarding the arrangements for filling the positions of regional heads in Indonesia, cannot be separated from the form of state and form of government adopted.⁷ The form of a unitary state with a system of regional autonomy assists the government in running its administration.⁸ A.F. Leemans argues that autonomy as freedom comes from the political philosophy of freedom reverberating in Europe.⁹ Freedom is not only in the sense of individual freedom but also in the sense of community freedom. The demand for autonomy means the rejection of the superior government's interference in regional matters. This kind of demand is deeply inspired by the political philosophy of freedom.¹⁰ But in reality, according to F Alderfer¹¹ and Brian C Smith¹², neither the

⁶ Muhammad Jufri Dewa et al, "Analisis Hukum Pengisian dan Pengusulan Wakil Kepala Daerah dalam Sistem Pemerintahan" (2022) 4:2 *Halu Oleo Legal Research* 183–201.

⁷ Ahmad Gelora Mahardika & Sun Fatayati, "Penerapan Pilkada Asimetris Sebagai Upaya Menciptakan Sistem Pemerintahan Daerah Yang Efektif" (2020) 1:1 *Indonesian Journal of Humanities and Social Sciences* 50–67.

⁸ Erga Yuhandra, Suwari Akhmaddhian & Anggit Anggiatna, "The Authority Relationship: Regional Head and His Deputy in the Regional Autonomy" (2021) 8:2 *UNIFIKASI : Jurnal Ilmu Hukum* 176–185.

⁹ Kardin M Simanjuntak, "Implementasi Kebijakan Desentralisasi Pemerintahan di Indonesia" (2015) 7:2 *Jurnal Bina Praja: Journal of Home Affairs Governance* 111–130 at 114.

¹⁰ AF Leemans, *Changing Patterns of Local Government* (The Hague: International Union of Local Authorities, 1970) at 22. Lemans explained the principle that local government should be independent within the sphere of its own interests gave rise to the "three-spheres theory" (de drie kringenleer) in various countries in Western Europe in the 19th century. According to this theory, countries, provinces, and, municipalities, each have their own government and administration environment.

¹¹ Harold F Alderfer, *Local Government in Developing Countries in The Liang Gie, Pertumbuhan Pemerintahan Daerah di Negara Republik Indonesia Jilid I Edisi Kedua* (Yogyakarta: Liberty, 1993) at 174. Alderfer explained, "In the modern sovereign

federal state nor the unitary state has full autonomy in the sense of complete freedom without the intervention of the superior government. Nevertheless, a certain degree of autonomy is a must for a successful nation.

Regions that are meant to be special autonomy are also known as the principle of symmetric decentralization which is part of the symmetric decentralization policy, in which in practice the differences in the use of the terminology of symmetric and asymmetric decentralization seem blurred.¹³ Both symmetric and asymmetric decentralization is the result of the development of democratization currents¹⁴ which are increasingly entering individual spaces so that homogeneous groups are moved to fight for their exclusive identities in a complex and pluralistic country.¹⁵

This mechanism has posed a complex question while dealing with the special local governments, as the 1945 Constitution of the Republic of Indonesia recognizes the special status for certain local governments. In this process, the government adopted Local Elections Law 22/2014, considered as through a comprehensive evaluation of the electoral practice of the head of local government,¹⁶ carried out directly in one package.¹⁷ The

national state, there is nothing like complete autonomy for local units of government, although that word is seen and heard in many places: smugly written into laws of the and spun into the web of political theories. Yet there is value in the concept of autonomy. It is an integral part of man's aspirations for freedom, basic in his quest for democracy, essential for internal stability, and a strong defence against outside enemies. Local autonomy, in one form or another, in some relative degree, is a fundamental ingredient of a successful nation".

¹² BC Smith, *Decentralization: The Territorial Dimension of the State* (London: Asia Publishing House, 1985) at 9.

¹³ Muhadam Labolo, *Desentralisasi Asimetrik di Indonesia: Peluang, Tantangan, dan Recovery* (Jakarta: Wadi Press, 2014) at 3.

¹⁴ MR Khairul Muluk, "Systematic Literature Review On Asymmetric Decentralization" (2021) 28:2 BISNIS & BIROKRASI: Jurnal Ilmu Administrasi dan Organisasi 96–105.

¹⁵ Mudiayati Rahmatunnisa, Reginawanti Hindersah & Tri Hanggono Achmad, "Why Regions with Archipelagic Characteristics in Indonesia Also Need Asymmetric Decentralization?" (2018) 10:2 Jurnal Bina Praja: Journal of Home Affairs Governance 251–261 at 253–254.

¹⁶ In Indonesia, there are two levels of local government systems. At the province level, the head of local government is called Governor and Vice Governor. In a regency/city, the head of the local government is called the regent/mayor.

¹⁷ One package refers to voting one number, which consists of the head of local government and the vice of local government.

evaluation concluded that the state and pairs of candidates required a lot of money to implement local head elections. The government justified that this condition has greatly resulted in more pervasive corruption, less effectiveness of administration, and a rising social conflict. In contrast, this mechanism does not necessarily engage more voter participation.¹⁸ Therefore, the government agreed to change the model for determining heads of local government through the indirect form.

Considerations that are common as the basis for a country implementing the first asymmetric decentralization policy are the existence of a consensus in history that is outlined in the constitution to create special areas, including special rights for certain elites in the political aspect.¹⁹ This consensus is usually about agreement on the recognition of traditions that are unique and different in general.²⁰ The second consideration is to minimize local community dissatisfaction with government policies.²¹ This consideration is a political consideration for rearranging as well as the existence of the region along with its uniqueness rather than using repressive powers whose impact will be more widespread. The third consideration is that asymmetric policies can be one of the strategies to maintain the balance of economic resources between regions so that national growth can be implemented evenly.²²

However, this Law 22/2014 received public rejection as the government was considered to trivialize democracy by shifting from the direct to indirect form. Also, it was disputed and filed to the Constitutional Court.²³

¹⁸ The Republic of Indonesia, Election of Governors, Regents and Mayors, Law Number 23 of 2014, General Elucidation, State Gazette of the Republic of Indonesia of 2014 Number 243, Supplement to the State Gazette of the Republic of Indonesia Number 5586.

¹⁹ Fakhrudin, "Sinkronisasi Peraturan KPU Dengan Undang-Undang Pemerintahan Aceh Pada Penyelenggaraan Pilkada Serentak Di Kabupaten Aceh Tamiang Tahun 2017" (2020) 2:2 Thesis on Electoral Governance 56–79 at 57.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ Constitutional Court Decision Number 138/PUU-VII/2009, p. 19. The Constitutional Court concluded as follows, "Considering that therefore a Government Regulation in Lieu of Law is required if:

The administration responded to it by issuing Government Regulation in Lieu of Law 1/2014 on elections of governors, regents, and mayors, as then enacted in Law 1/2015. The rules on the elections of the head of local governments have experienced continuity and changes, particularly with the enactment of Law 8/2015 on Stipulation of Government Regulation in lieu of Law 1/2014, followed by enacting Law 10/2016 on the second amendment to Law 1/2015. Through Law 10/2016, the model for determining the head of local government has re-changed to the direct form until now.

The dynamics of setting the model for filling local government head positions implies the government's strenuous efforts to realize democracy in Indonesia.²⁴ Various models have been carried out, but the ideal model has yet to be found. This study will answer the ideal model by doing a comparison of countries that have special regions in the world together by comparing the laws and regulations relating to the filling local government's head.

To prove this, researcher look for research that has the same theme. There are two studies that researcher found, namely the first dissertation written by Ridwan Mukti entitled, "Different Electoral Systems in Indonesia Implications of Restrictive Meanings in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia".²⁵ Dissertation defended before an open academic session of the Faculty of Law, University of Sriwijaya on December 23, 2013, Ridwan Mukti concluded: 1) Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia is interpreted incorrectly, partially, and restrictively by Law Number 32 Year

-
1. The existence of circumstances, namely an urgent need to resolve legal issues quickly based on the Act;
 2. The required law does not yet exist, so that there is a legal vacuum, or there is a law, but it is not sufficient.
 3. The legal vacuum cannot be overcome by making laws in the usual procedure because it will take quite a long time while the urgent situation requires certainty to be resolved.

²⁴ Ma'mun Murod et al, "The Political Role of the Survey Agency in Indonesia Democracy" (2022) 5:2 Journal of Local Government Issues (LOGOS) 176–192.

²⁵ Ridwan Mukti, *Sistem Pemilihan Beragam di Indonesia Implikasi Makna Restriktif dalam Pasal 18 ayat (4) UUD 1945* Pascasarjana Fakultas Hukum Universitas Sriwijaya, 2013).

2004 so that the consequences of regional elections are problematic, both in practice (behavior), as well as norms, as well as the form of the rules. 2) Arrangements for regional elections in the future will be carried out through a law that is general in nature and implemented technically by the regional regulations of each province or district/city. 3) The Regional Head Election model in the future is a condition sine quanon that must be diverse, reflecting the diversity within the framework of a unitary state. Concretely: it can be elected by the DPRD or directly elected, or elected by a mixed system, such as elections by DPRD expanded, direct elections narrowed, and customary elections.

Another research that researcher studied was a dissertation written by Anthon Raharusun entitled, "Asymmetric Decentralization Within the Unitary State of the Republic of Indonesia Study of Asymmetric Arrangement Formats in Yogyakarta, Aceh, and Papua in the 1950-2012 Period".²⁶ The research results obtained are as follows: seen from the history of the development of local government in Indonesia from the perspective of the Unitary State, the special autonomy policy was only given to Yogyakarta, Aceh, and Papua based on considerations of historical, political, religious and cultural factors. Conceptually the application of the asymmetric decentralization policy (special autonomy) for Yogyakarta, Aceh, and Papua is not based on a clear grand design/blueprint which causes the special autonomy policy to be interpreted only as a large fiscal policy and is based more on the wishes of the bureaucracy and elites. the political elite alone, so the special autonomy policy is not the aim of increasing the welfare and prosperity of the people; the strategy for implementing asymmetric decentralization policies in Yogyakarta, Aceh, and Papua is to utilize and apply an asymmetric approach more optimally by applying the basic elements of local government as tools to sharpen asymmetric issues in terms of substance, not only in terms of title but how the concept of asymmetry is translated more optimally in the reality of regional government administration to accelerate welfare and prosperity for the community.

²⁶ Anthon Raharusun, *Desentralisasi asimetrik dalam negara kesatuan Republik Indonesia : studi terhadap format pengaturan asimetrik di Yogyakarta, Aceh dan Papua dalam periode 1950-2012* (Universitas Indonesia, 2014).

Based on the search results from the two dissertations above, there has been no previous research that examines the ideal model for filling regional head positions in Indonesia. Therefore, the research material in this dissertation is very important and worthy of research.

II. METHODS

This research focused on the dynamics of the legislation and regulations regulating local head elections in Indonesia. The type of research method employed is normative juridical legal research. The data collection technique used is the study of documents and literature on secondary data in the form of primary, secondary, and tertiary legal materials. The analysis used is descriptive.

III. THE MODEL FOR DEMOCRATICALLY ELECTION OF LOCAL HEAD IN INDONESIA

The choice of an electoral system must ensure that the political division of society is adequately addressed by the electoral legal framework so that major contradictions and differences between social groups can be accommodated through a system of political representation.²⁷ This is to ensure political participation and representation. Thus, an electoral system should be seen as an exercise of certain objectives like proportional election results, and strong local district representation is first accounted for. It is made before considering which electoral system can best fulfill those objectives regarding a particular country's social circumstances, politics, geography, and history.²⁸

There is no one-size-fits-all electoral system and no universally recognized standard. The choice of the electoral system needs to be made, keeping in mind the desired goals.²⁹ The effects that different electoral systems can

²⁷ International IDEA, *International Electoral Standards: Guidelines For Reviewing The Legal Framework of Elections* (Sweden: IDEA Publication, 2002) at 23.

²⁸ *Ibid.*

²⁹ Achmad Edi Subiyanto, "Pemilihan Umum Serentak yang Berintegritas sebagai Pembaruan Demokrasi Indonesia" (2020) 17:2 JK 355–371.

have are ultimately contextual and depend on certain divisions and divisions within a society. Although certain electoral systems are more likely to produce, for example, election results that are more proportional than others, the general consequences of electoral systems are concrete in their context. When examining electoral systems, an important consideration is whether a country is sharply divided along political, religious, ethnic, or other lines and whether minorities are represented fairly.³⁰ If a country has a particular problem, which can be directly caused by the choice of an electoral system or remedied through the use of a different electoral system or by introducing certain reforms to a particular electoral system, the advantages and disadvantages of different electoral systems should be outlined along with relevant recommendations to address the inequities which exist.³¹

Andrew Reynold et al. considered to opt the electoral system. He highlighted representation, making elections easy to use and meaningful, enabling peace, facilitating effective and stable governance, and the accountable government elected. In addition, voters can monitor elected representatives, encouraging political parties to work better and promoting legislative opposition. Also, they can make the election process sustainable and follow international standards.³²

There is no definite measure of what electoral system is considered the most democratic and has the highest degree of the people's sovereignty.³³ Each country has the sovereignty of the people in understanding and implementing the sovereignty of its people through the implementation of elections in different practices.³⁴ According to Donald L. Horowitz, these

³⁰ Muhammad Imaduddin Nasution, "Demokrasi dan Politik Minoritas di Indonesia" (2013) 4:2 Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional 313–335.

³¹ IDEA, *supra* note 25 at 25-26.

³² Andrew Reynolds, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005).

³³ *Ibid.*

³⁴ The differences in elections implemented in some countries, such as the United Kingdom, have many mechanisms to elect their local government. In London, the mayor is elected by the people. However, the mayor is elected in another city by Local People's Representative Assembly.

differences are caused by different party systems, social and political conditions, population size, and types of political systems.³⁵ Therefore, Horowitz considers it natural that the choice of all electoral systems has always been debated. However, whatever the basis for consideration, usually, a country in choosing and determining the electoral system to be used is always based on a series of conditions. Still, according to Horowitz, the electoral system is usually determined by considering several things, including the ratio of seats to the number of votes, accountability to constituents, enabling the government to survive, producing a majority winner, creating inter-ethnic and religious coalitions, and minorities being able to sit in public office.³⁶ This is certainly in line with what was conveyed by Hans Kelsen. The principle of majority in a democratic society can only be implemented if all citizens in a country are allowed to participate in the formation of the legal order.³⁷ This is then called the term compromise.³⁸

Compromise is the primary condition to determine whether a country adheres to democratic principles. The principle of democracy is highly dependent on local culture and customs.³⁹ According to Hans Kelsen, the democratic principles of one country cannot be used as the same standard for other countries. Many aspects and the surrounding environment influence its existence.⁴⁰ According to Hans Kelsen, the characteristics of democracy are:⁴¹

³⁵ Donald L Horowitz, *Electoral Systems and Their Goals: A Primer for Decision-Makers* (North Carolina: Duke University, 2003).

³⁶ *Ibid* at 6.

³⁷ Samuel Augustine Umezurike & Chux Gervase Iwu, "Democracy and Majority Rule in South Africa: Implications for Good Governance" (2016) 8:2 *Acta Universitatis Danubius Administratio* 38–55.

³⁸ Hans Kelsen, *General Theory of Law and State* (New York: Russell & Russell, 1973) at 407.

³⁹ Silvester Sili Teka, "Dialectics of Democracy in the Framework of Politics Primordialism Local Elections A Case Study of the People of West Sumba District and East Sumba District" (2020) 12:2 *Jurnal Bina Praja: Journal of Home Affairs Governance* 193–201.

⁴⁰ Kelsen, *supra* note 38.

⁴¹ *Ibid*.

“There is the will of the majority and the will of the minority; the will of the majority cannot be absolute domination; there is a compromise between the will of the majority and the will of the minority in addressing a problem and in the formation of a level; no coercion in religion and belief; There is freedom of speech, freedom of the press, and the existence of opinions to express opinions is guaranteed, either through the constitution or through customary agreements that occur in a country.”

The meeting of the majority vote and the minority voice resulted in a compromise. According to Hans Kelsen, democracy emphasizes the presence or absence of a compromise that unites differences to determine an order for the foundation of a state.⁴² The principle of compromise is the resolution of a problem through a norm that is not entirely in the interests of one party nor is wholly contrary to the interests of the other party.⁴³

Given such tendencies, democracy is an approach toward the ideal of perfect self-determination. In line with this, discussions between the majority and the minority are continuously carried out so that a mutual agreement occurs and becomes a guide for the community in carrying out their activities. Majority decisions without compromise and do not accommodate minority interests do not constitute an intelligent political process.⁴⁴ This is because the dominant majority strategy excludes important social groups from democracy, especially when it involves essential values and goals. Thus, it undermines democracy, contradicting the perception of most people that, ultimately, the democratic decision-making process aims to serve the interests of all.⁴⁵ Another reason is that decisions made without compromise are often unstable because parties not included in the consideration actively encourage change. As such, most of these decisions are not made in the long-term interests of those in power.⁴⁶

⁴² Lars Vinx, “Hans Kelsen and the material constitution of democracy” (2021) 12:4 *Jurisprudence* 466–490.

⁴³ Kelsen, *supra* note 38.

⁴⁴ Irena Novarlia, “Kompromi sebagai Kunci Budaya Demokrasi” (2015) 2:2 *Sosio-Didaktika: Social Science Education Journal* 194–202.

⁴⁵ Hagop A Yacoubian, “Scientific literacy for democratic decision-making” (2018) 40:3 *International Journal of Science Education* 308–327.

⁴⁶ Thomas Meyer, *Compromise* (Jakarta: Friederich – Ebert – Stiftung (FES), 2008) at 22.

If compromise is the key to the search for an ideal model in the election of the head of local governments, then as the Indonesian nation that always has a philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia, the use of ideology based is a wise thing. In Pancasila, it is stated that "People led by wisdom in deliberation/representation".⁴⁷ This principle contains a reasonably deep and basic meaning for formulating the ideal model for filling the position of the head of local governments in Indonesia. Consensus deliberation implies that at every opportunity related to decision-making, awareness, and wisdom are needed to decide before a decision is implemented.⁴⁸ It is always preceded by compromise and willingness to hear opinions from various parties. It is also always attempted first to understand the existing problems. Compromise with consensus deliberation will result in decisions that can satisfy many parties to avoid vertical and horizontal conflicts.⁴⁹

According to Djohan, if the legislators are willing to deliberate to reach a consensus by applying the fourth precept in formulating the ideal model for filling the position of the local head, then the result will be wisdom for all Indonesian people. This is due to the birth of a consensus agreed upon by everyone, not rushing to decide policies by voting.⁵⁰ This opinion is per Indonesia's conditions, consisting of thousands of ethnic groups and customs that are unique in each region.⁵¹ The 1945 Constitution of the Republic of Indonesia recognizes the existence of these regions, including those special and those with special autonomy.⁵² As the legislative branch, the government must be wiser in making the ideal model for filling the

⁴⁷ Yusuf Mustafa, Made Warka & Hufron, "Presidential Election and Vice President of the Republic of Indonesia Based on Pancasila Democratic Principles" (2019) 88:1 *Journal of Law, Policy and Globalization* 1–5 at 1.

⁴⁸ Muhammad Taufiq et al, "Powers on Community-Level Deliberation: A Power Cube Approach" (2022) 54:2 *Indonesian Journal of Geography* 303–312.

⁴⁹ Irena Novarlia, "Kompromi sebagai Kunci Budaya Demokrasi" (2015) 2:2 *Sosio-Didaktika: Social Science Education Journal* 194–202 at 200.

⁵⁰ Djohermansyah Djohan, *Pengisian Jabatan Kepala Pemerintahan Daerah Secara Asimetris Dalam Bingkai Negara Kesatuan Republik Indonesia dan Pancasila* (2020).

⁵¹ Indonesia has 1.331 ethnic groups. Badan Pusat Statistik, "Mengulik Data Suku di Indonesia", (2015), online: <<https://www.bps.go.id/news/2015/11/18/127/mengulik-data-suku-di-indonesia.html>>.

⁵² The Republic of Indonesia, *Post Amendment of the 1945 Constitution*, Article 18th.

head of local government position. This asymmetric nature has indeed been implemented in several areas. For example, in Papua, which uses noken, an indigenous way of determining local heads, the regents and mayors in DKI Jakarta are appointed, the Governor of the Special Region of Yogyakarta is appointed, and local parties are allowed to participate in the election contestation in Aceh.⁵³ This policy should reflect the central government in taking the following policy. There should be no coercion of policy uniformity without paying attention to the interests and needs of the region concerned.

Learning from past experiences, the four models for filling local head positions that have been implemented have yet to reach the ideal model compatible with the plurality of the Indonesian nation. Uniformity in regulation within the framework of the Unitary State of the Republic of Indonesia is insufficient to accommodate each region's needs. The existence of uniqueness and peculiarities in running the government, including determining the model for filling the position of the local head, is a special consideration for the central government. A compromise is needed to exchange benefits in a way accepted by all parties to gain legitimacy and create stability.

IV. THE IDEAL MODEL FOR FILLING THE POSITION OF THE HEAD OF LOCAL GOVERNMENTS IN INDONESIA

During the Covid-19 pandemic, states across Europe have been confronted with a variety of challenges, including the issue of ensuring jobs and incomes for their citizens. The Covid -19 pandemic has caused economies throughout Europe to collapse at an unprecedented rate, which has led to a significant number of people losing their jobs. In the first quarter of 2020, 3.0 million EU residents were out of work due to temporary layoffs, a

⁵³ See Constitutional Court Decision number 47-81/PHPU-A-VII/2009. See also the Republic of Indonesia, *Law on the Provincial Administration of the Special Capital City of Jakarta as the Capital of the Unitary State of the Republic of Indonesia*, Law Number 29 of 2007, Article 19 paragraph 2. See the Republic of Indonesia, *Law on the Privileges of the Special Region of Yogyakarta*, Law Number 13 of 2012, Article 18 – Article 26. See the Republic of Indonesia, *Law on the Government of Aceh*, Law Number 11 of 2006, Article 80(1).

figure that nearly fivefold increased in the second quarter (Q2 2020), reaching 13.8 million.⁵⁴ The widespread layoffs occurred as a direct result of the widespread business closures that were required to prevent the spread of the COVID-19 virus.

The basic principle of local autonomy is regulated in Article 18 of the 1945 Constitution of the Republic of Indonesia, which regulates in detail the local government units and the principle of local autonomy, namely:

Paragraph (1) "The Unitary State of the Republic of Indonesia is divided into provincial regions, and the provincial regions are divided into regencies and cities, each of which has a local government, which is regulated by law."

Paragraph (2) "Provincial, regency and city local governments regulate and manage their government affairs according to the principle of autonomy and co-administration."

Paragraph (3) "Local governments exercise autonomy to the fullest extent possible, except for government affairs which are determined by law to be the affairs of the Central Government."

The authority of the provinces and regencies/municipalities in regulating and managing their interests with local autonomy and co-administration is based on the Constitution. Ramlan Surbakti has the same opinion on this matter.⁵⁵ The authority of the provinces and regencies/municipalities in regulating and managing their interests with the principle of local autonomy is not a gift from the central government but a constitutional guarantee of Article 18. The President does not give the power to DPRD and local heads as the head of the central government. In other words, the framework used to reorganize the Local Head General Elections toward

⁵⁴ Eurostat, "Temporary lay-offs from work record high in 2020", (2021), online: <<https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20210419-1>>.

⁵⁵ Ramlan Surbakti, *Regional Autonomy as Widespread as Possible and the Supporting Factor* (Center for Institutional Reform and the Informal Sector (IRIS) University of Maryland at College Park, 2001) at 5-6.

democratic, accountable, and sustainable local governance is presented in the following diagram:⁵⁶

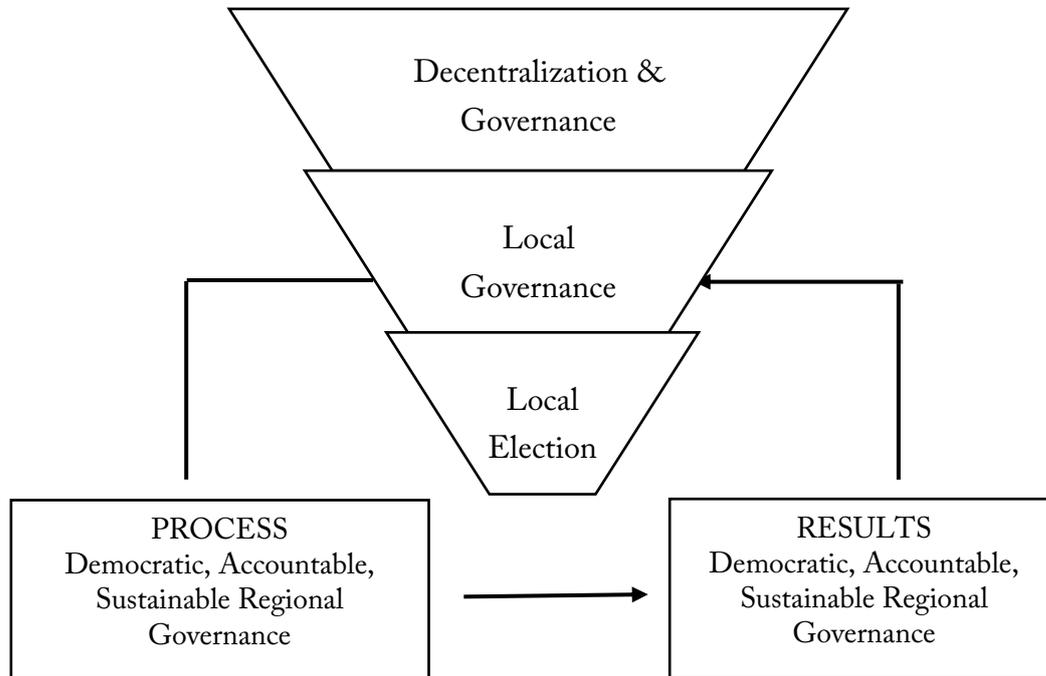


Figure 1. *Framework for Reorganizing the Local Head Election*

One of the most decisive elements in an autonomous region is the Local head as the highest leader of a region who will determine the direction of efforts to achieve people's welfare.⁵⁷ Closely related to the position of a Local Head is the mechanism for determining local heads at both the regency/city and provincial levels. The mechanism for selecting local heads through direct and indirect elections will significantly determine the quality of legitimacy and political relations formed between the local head and the local community.⁵⁸ In the next stage, the mechanism for selecting local

⁵⁶ Kurniawati Hastuti Dewi, *Menata Ulang Pemilukada Menuju Tata Kelola Pemerintahan Daerah Demokratis, Akuntabel, dan Berkelanjutan* (Jakarta: Pusat Penelitian Politik, 2016) at 12.

⁵⁷ The Republic of Indonesia, *Post Amendment of the 1945 Constitution*, Article 18th paragraph 4th

⁵⁸ Dewi, *supra* note 50 at 28.

heads will significantly determine the outcome of the decentralization policy in a country.⁵⁹

Based on Article 18(4) of the 1945 Constitution of the Republic of Indonesia, the election of Local Heads must be conducted democratically.⁶⁰ Departing from this norm, for sure, the model and the election mechanism open flexible space for legislators to formulate, which of course, is based on the context and needs of the nation and state. The election model by the DPRD is the starting point for new leadership in the regions after previously the determination and appointment of Local Heads and Deputy Local Heads were elected by the President.⁶¹

Structuring the election of Local Heads and Deputy Local Heads by tightening the supervision of the implementation of the Local Head General Election and strengthening the guidance and supervision of the administration of the local government. If implemented, the will of the Government and DPR will reduce the existence of Article 18(4) of the 1945 Constitution of the Republic of Indonesia. If the re-election model is like Law 22/1999 about Local Government, then the people's sovereignty will be reduced, resulting in reduced levels of democracy in the regions, especially the provinces. Moreover, based on the Constitution, especially Article 18, the Governor, Regent, and Mayor have the same position as Local Heads⁶², the difference is the size of the authority they have. The Governor, as the head of the region at the provincial level and at the same

⁵⁹ *Ibid.*

⁶⁰ Gamawan Fauji, "The Contribution Of Direct Elections For Local Leaders To The Corruption In Indonesia: Lessons Learned From Indonesian Democratic System" (2014) 7:2 International Journal of Education 103–110.

⁶¹ The Republic of Indonesia, Law on Local Government, Law Number 5 of 1974, Article 15: "(1) Heads of Level I Regions are nominated and elected by the House of Representatives Region from a minimum of three people, and a maximum of five candidates who have been discussed and mutually agreed upon between the Leaders of the Local People's Representative Council/Leader of Factions with the Minister of Home Affairs; (2) The results of the election as referred to in paragraph (1) of this Article shall be submitted by the relevant Local House of Representatives to the President through the Minister of Home Affairs at least 2 (two) persons to be appointed one of them; (3) The procedure for implementing the provisions referred to in paragraph (1) of this Article is regulated by a Regulation of the Minister of Home Affairs."

⁶² The Republic of Indonesia, *Post Amendment of the 1945 Constitution*, Article 18(4).

time as the representative of the central government in the region,⁶³ has greater authority when compared to regents and mayors who become local heads at the regency and city levels.⁶⁴

The concept of filling local head positions asymmetrically is the most effective mechanism for filling positions in Indonesia. This is considering the vast territory of Indonesia and the diversity of ethnic and cultural groups of the nation. Studies on asymmetry are generally placed on asymmetric decentralization studies. Asymmetric decentralization is commonly applied in other countries' unitary and federal states.⁶⁵

This is in line with the thoughts conveyed by Litvack et al. They agreed to state that differences in economic, demographic, and social conditions in certain regions made it impossible to implement a "one size fits all" political or decentralization policy so that to accommodate these different needs, policies were needed, especially in terms of decentralization, with the principle of asymmetric decentralization, which treats different units in different conditions to achieve the same goal.⁶⁶

The direct election of local heads is one of the models for filling the positions of local heads, referred to as the most democratic model. One person one vote is considered the highest recognition of democracy. If studied in depth, developed and democratic countries such as the United States, France, Britain, and Canada, which are also the object of this research, do not adopt direct elections in choosing their chief executives. The United States uses an electoral college in its electoral system, although

⁶³ Dinoroy Marganda Aritonang, "Perkembangan Pengaturan Format Dekonsentrasi Di Indonesia" (2018) 14:2 Jurnal Legislasi Indonesia 199–210.

⁶⁴ Eko Wahyono, "Direct Election Of Regional Heads By The People To Realize The Welfare Of The People" (2022) 3:2 USRAH: Jurnal Hukum Keluarga Islam 95–117.

⁶⁵ Robert Endi Jaweng, "Kritik terhadap Desentralisasi Asimetris di Indonesia" (2011) 40:2 Jurnal Analisis-CSIS 160–176 at 163. The article also explains that this asymmetrical decentralization can also be applied to special autonomy, special territory, or what is commonly known in Indonesia as special autonomy, special regions, or special regions.

⁶⁶ Gunawan A Tauda, "Desain Desentralisasi Asimetris Dalam Sistem Ketatanegaraan Republik Indonesia" (2018) 1:4 Administrative Law and Governance Journal 413–435.

there are some states whose governors are directly elected.⁶⁷ The United Kingdom used the appointment model for Lord Lieutenant and areas of special authority. The asymmetric model was applied to the mayors of England and Wales,⁶⁸ as well as to parish/districts. Canada uses direct election only for the post of Governor of the State, whereas the mayor comes from the directly elected chair of the city council.⁶⁹ Meanwhile, the model for filling local head positions in France is indirect elections.⁷⁰

The various models for filling local head positions have influenced the local government system in Indonesia. Indonesia has implemented the four models for filling local head positions from 1945 - 2022.⁷¹ Centralization was felt when Indonesia implemented a model of appointment and/or appointment for local heads during the promulgation of Law Number 5 of 1974. Although the Provincial DPRD has submitted several names to the President to be elected as Governor, it is the President's prerogative to appoint anyone from several names without considering the serial number of the proposed list of names.

The direct implementation of the model for filling local head positions is not without conflict. Conflicts that occur are not only conflicts that arise in implementing the stages of the head elections but also conflicts since the Regional Head Election is scheduled. One of the things that can trigger conflict before the Regional Head Election is the problem of funding for the Regional Head Election, which is quite large, and several regions do not have the financial capacity to organize local head elections. As listed in the table below:

⁶⁷ USAGov, "Presidential Election Process", (2023), online: <<https://www.usa.gov/election>>.

⁶⁸ David Marsh, David Richards & Martin Smith, "Unequal Plurality: Towards an Asymmetric Power Model of British Politics" (2003) 38:3 *Government and Opposition* 306–332.

⁶⁹ *Canada's Parliament and other political institutions*, by Matthew Parry (Canada: European Parliament, 2022).

⁷⁰ Daniele Caramani, *Comparative Politics* (United Kingdom: Oxford University Press, 2020).

⁷¹ Ali Muhammad Johan, "Sistem Pemilihan Kepala Daerah Pada Daerah Yang Memberlakukan Desentralisasi Asimetris" (2021) 5:1 *Al-Qisth Law Review* 70–98.

Table 1. *Regions with the less local budget for the 2017/2018 local elections.*⁷²

No.	Regency/City	Locally Generated Revenue (IDR)	Local Election Cost (IDR)
1.	Sitaro Regency (North Sulawesi)	21.942.016.766	22.500.000.000
2.	Banggai Islands Regency (Central Sulawesi)	17.000.965.000	22.937.624.181
3.	South Buton Regency (Southeast Sulawesi)	4.504.871.630	17.000.000.000
4.	North Buton Regency (Southeast Sulawesi)	9.255.611.531	21.769.400.000
5.	West Muna Regency (Southeast Sulawesi)	6.760.314.020	22.448.000.000
6.	Maybrat Regency (West Papua)	3.929.000.000	45.000.000.000
7.	Tambraw Regency (West Papua)	5.884.493.446	43.995.426.200
8.	Deiyai Regency (Papua)	1.500.000.000	43.692.884.500
9.	Dogiyai Regency (Papua)	2.795.478.116	56.803.560.700
10.	Intan Jaya Regency (Papua)	4.400.000.000	66.804.949.500
11.	Lanny Jaya Regency (Papua)	15.525.552.000	64.999.957.000
12.	North Mamberamo Regency (Papua)	1.000.000.000	57.800.000.000

⁷² Processed from various sources.

13.	Mappi Regency (Papua)	18.463.146.000	63.872.014.000
14.	Nduga Regency (Papua)	8.585.174.000	61.847.000.000
15.	Paniai Regency (Papua)	18.534.790.664	76.986.591.000
16.	Puncak Regency (Papua)	8.500.000.000	78.693.796.250
17.	Puncak Jaya Regency (Papua)	20.722.161.852	59.998.694.500
18.	Sarmi Regency (Papua)	9.500.000.000	34.000.000.000
19.	Tolikara Regency (Papua)	6.029.628.000	69.115.000.000

It is undeniable that the cost to carry out the Regional Head Election is purely from the Anggaran Pendapatan dan Belanja Daerah (APBD – Local Income and Expenditure Budget), which mostly comes from Pendapatan Asli Daerah (PAD – Locally Generated Revenue). In Article 166(1) of Law Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 Concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 Concerning the Election of Governors, Regents, and Mayors to Become Law, it is regulated that, "Funding for election activities is charged to the APBD, and can be supported by the national budgets under the provisions of the legislation". However, the local budget instrument indicates the ability to carry out the direct local election, which cannot be used as the only benchmark. However, it can be considered if the model for filling the position of the local head will be directly applied in the region. In addition to the lack of funding, horizontal conflicts often occur during the direct local head election⁷³ a stage can be another indicator. The

⁷³ The Bawaslu RI noted that ASN committed 917 violations during the 2020 Pilkada. The violations committed were in the form of providing support to one of the candidate pairs. This happens because the ASN feels uncomfortable carrying out its duties. After all, they have to consider political matters, see Badan Pengawas Pemilihan Umum, *Catatan Pengawasan Pemilihan 2020*, 3d ed (Jakarta: Badan Pengawas Pemilihan Umum, 2020) at 106-107; Another example of horizontal conflict can be seen in the 2017 direct local election, where the Regency of Intan Jaya was paralyzed for weeks, and dozens of people were killed due to a conflict between

following is election violation data that can be collected during the 2017, 2018, and 2020 local elections.⁷⁴

Table 2. *Violations in Simultaneous Local Elections (2017, 2018, and 2020)*

No.	Provinces	2017	2018	2020
1.	The Riau Islands	-	1	113
2.	North Kalimantan	-	7	174
3.	West Papua	18	-	381
4.	South Kalimantan	2	20	148
5.	West Sumatera	6	16	380

groups supporting the local Regent and Deputy Regent candidates, see Katharina Janur, “Konflik Pilkada, Warga Intan Jaya Terancam Kelaparan”, (2017), online: *liputan6.com* <<https://www.liputan6.com/news/read/3085055/konflik-pilkada-warga-intan-jaya-terancam-kelaparan>>; Other conflicts can be seen in the Regency of Maybrat, Papua, where chaos occurred during the 2017 simultaneous local election vote recapitulation, see JPNNcom, “Koordinasi Buruk Penyebab Keriuhan Pilkada Maybrat”, (2017), online: <<https://m.jpnn.com/news/koordinasi-buruk-penyebab-keriuhan-pilkada-maybrat>>; Alternatively, the conflict in Boven Digoel Regency, where the KPU decided to postpone the direct local election, which was supposed to be held on December 9, 2020, because of security factors, see Yuliana Lantipo, “Pilkada Boven Digoel ditunda, pemilihan kepala daerah di 10 wilayah Papua lain tetap berjalan”, (2020), online: *BBC News Indonesia* <<https://www.bbc.com/indonesia/indonesia-55219688>>.

⁷⁴ Badan Pengawas Pemilihan Umum, *Data Pelanggaran Pemilu 2017* (Jakarta: Badan Pengawas Pemilihan Umum, 2017) at 1; Badan Pengawas Pemilihan Umum, *Data Pelanggaran Pemilu 2018* (Jakarta: Badan Pengawas Pemilihan Umum, 2018) at 1; Badan Pengawas Pemilihan Umum, *Data Pelanggaran Pemilu 2020* (Jakarta: Badan Pengawas Pemilihan Umum, 2020) at 1. In the 2017 direct local election, 7 provinces, 18 cities, and 76 districts held elections. In 2018, 17 provinces, 115 regencies, and 39 cities held elections. Meanwhile, in 2020 there will be 9 provinces, 37 cities, and 224 regencies. For data on violations of the 2020 Local Head Elections, the data is updated as of May 4, 2021, after the results of the re-voting (PSU) are held and sourced from the Bureau of Law and Violation Handling of the Election Supervisory Body of the Republic of Indonesia. DKI Jakarta Province and Aceh Province will not hold the Pilkada in 2020. The color table is adjusted according to the HDI level of each province, namely yellow for high HDI and green for very high HDI.

6.	Bali	8	28	58
7.	Gorontalo	24	16	179
8.	The Bangka Belitung Islands	13	27	68
9.	Special Region of Yogyakarta	54	-	56
10.	Southeastern Nusa	17	39	289
11.	West Kalimantan	17	38	230
12.	Central Kalimantan	16	48	112
13.	Central Sulawesi	18	32	787
14.	East Kalimantan	-	78	318
15.	North Maluku	69	15	809
16.	West Southeast Nusa	-	86	422
17.	Bengkulu	26	68	386
18.	North Sumatera	10	84	754
19.	West Sulawesi	67	34	305
20.	South Sumatera	1	102	190
21.	Banten	0	137	324
22.	Papua	89	38	187
23.	Jambi	120	33	224
24.	Riau	38	125	231

25.	Special Capital District of Jakarta	182	-	-
26.	North Sulawesi	79	121	374
27.	East Java	18	226	1.349
28.	Aceh	236	23	-
29.	Southeast Sulawesi	67	226	154
30.	Moluccas	140	170	108
31.	South Sulawesi	23	301	1.034
32.	West Java	40	446	530
33.	Lampung	103	397	876
34.	Central Java	140	890	646
Total		1.641	3.842	12.196

The increase in the number of local election violations, one of which is caused by the neutrality of the State Civil Apparatus (ASN) in the implementation of local elections in their regions. There are only two modes: bureaucratic politicization and practical politics of bureaucracy.⁷⁵ The politicization of the bureaucracy is one of the processes which later becomes the root of the problem of ASN neutrality.⁷⁶ Bureaucratic politicization means politics intervening in the bureaucracy, political parties, success teams, regional head candidates, state head candidates, or incumbents who try to intervene in the bureaucracy to support him.⁷⁷ In

⁷⁵ Hatta Abdi Muhammad & Muhammad Yusuf, "Bureaucracy and Political Parties: Political Clientelism in Contestation of Power in Tanjung Jabung Timur Regency" (2020) 5:3 *Politik Indonesia: Indonesian Political Science Review* 375–390.

⁷⁶ Irfan Setiawan & Afira Fitri Hapsari, "The Neutrality Crisis Of The State Civil Apparatus: Practical Politics Unethic Public Bureaucrats" (2022) 10:2 *Jurnal MSDA (Manajemen Sumber Daya Aparatur)* 158–171.

⁷⁷ Piki Darma Kristian Pardede & Rudi Kristian, "Analysis of Strengthening Bureaucracy Neutrality Policy Implementation in the Local Elections (A Study in

addition, there is also a political bureaucratic process that could occur. This process is part of a person's rational calculations, such as the pros and cons of being on a successful team or the sense of pride that grows because of primordialism. Almost all ASN who carried out Regional Head Election in 2020 feels uncomfortable carrying out their duties because they are forced to consider political matters. In fact, according to the State Civil Apparatus Committee (KASN RI), 51.16% of ASN want ASN political rights to be revoked, so it needs to be handled comprehensively.⁷⁸

Although it has shown better handling, the survey results show that ASN views that the imposition of sanctions has yet to produce a deterrent effect. This can be seen from the ongoing practice of 'retribution' and 'revenge' in ASN career development after the inauguration of definitive local heads in various regions.⁷⁹ Moreover, the survey conducted by KASN clearly shows that ASN was more impartial during the 2020 direct local elections than the 2019 presidential election. There is a need for a more in-depth study of the position of local heads as Personnel Guiding Officers or Panitia Pengawas Kecamatan (PPK). This position can be given to the local secretary, an ASN official in the region, if the region does not require the position of local deputy head.

The elections for local heads and deputy local heads that have been carried out so far have created many conflicts and produced unqualified local leaders. From 2006-2018, the Corruption Eradication Commission, or Komisi Pemberantasan Korupsi (KPK), arrested 100 local heads for corruption cases.⁸⁰ 429 local heads and deputy local heads, or the equivalent

North Sumatera)" (2021) 4:2 Journal of Local Government Issues (LOGOS) 155–169.

⁷⁸ Bawaslu Kabupaten Bengkulu Utara, "Potret Netralitas Birokrasi Menyongsong Tahun Politik 2024 – Rilis Hasil Survei Nasional Netralitas ASN Pada Pilkada Serentak Tahun 2020", (2021), online: <<https://bengkuluutarakab.bawaslu.go.id/potret-netralitas-birokrasi-menyongsong-tahun-politik-2024-rilis-hasil-survei-nasional-netralitas-asn-pada-pilkada-serentak-tahun-2020/>>.

⁷⁹ *Ibid.*

⁸⁰ Lia Hutasoit, "KPK Sudah Tangkap 100 Kepala Daerah, Ini Daftar Lengkapnya", (2018), online: *CNN Indonesia* <<https://www.idntimes.com/news/indonesia/lia-hutasoit/daftar-lengkap-100-kepala-daerah-ditangkap-kpk-sejak>>.

of 79% of the KPK arrested from 2005 to 2021.⁸¹ This was previously predicted, considering the high cost of holding elections.⁸² Not to mention the costs that candidates must prepare before and after being elected local heads and deputy local heads. This fee is used for political dowries at all management levels so that the candidacy of candidates as local heads or deputy local heads is smooth without any obstacles.⁸³ Candidates must also prepare funds for a successful team that supports the candidate from the start of the nomination to the end.⁸⁴ Campaign costs, witness fees at polling stations, and costs for disputes over results at the Constitutional Court must also be taken into account when running for office. All of these costs will be sought to break-even point when the candidate succeeds in becoming a local head or deputy local head.

In mapping corruption cases in the first semester of 2021, it was also found that there were 10 local heads designated as corruption suspects, consisting of one Governor, two mayors, and 7 regents or deputy regents.⁸⁵ Not to mention the conflicts that occur between local heads and DPRD members⁸⁶ as well as local heads and their deputy local heads. This shows

⁸¹ Djohan, *supra* note 50. Local heads and local deputy heads affected by corruption cases can be detailed as follows: Governor 36 people, Deputy Governor 7 people, Regent 236 people, Deputy Regent 62 people, Mayor 68 people, Deputy Mayor 20 people.

⁸² *Ibid.* The 2015 elections, held in 269 regions, required a budget of 7.09 T. The 2017 elections in 101 regions required a budget of 5.96 T. The 2018 elections, which were held in 171 regions, required 15.16 T. The 2020 elections, which were held in 270 regions, need funds of 20.46 T

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ Diky Anandya, Lalola Easter & Kurnia Ramadhana, *Hasil Pemantauan Tren Penindakan Kasus Korupsi Semester I 2021* (Jakarta: Indonesia Corruption Watch, 2021) at 21.

⁸⁶ The dispute in North Central Timor is accessed from Gibran Maulana Ibrahim, "Ribut dengan DPRD, Bupati TTU Tak Terima Anggaran Guru Dialihkan ke PU", (2019), online: *detiknews* <<https://news.detik.com/berita/d-4772370/ribut-dengan-dprd-bupati-ttu-tak-terima-anggaran-guru-dialihkan-ke-pu>>; . The feud in Sikka is accessed from Eugenius Moe, "Konflik Bupati dan DPRD Sikka - Mengapa DPRD Sikka Keberatan dengan Pernyataan Bupati Idong?", (2019), online: *tribunnews* <<https://kupang.tribunnews.com/2019/02/07/mengapa-dprd-sikka-keberatan-dengan-pernyataan-bupati-idong>>; The feud in Buru is accessed from Beritabetacom, "Konflik Bupati Vs Mantan Ketua DPRD Buru Makin Menajam", (2019), online: <<https://beritabeta.com/konflik-bupati-vs-mantan-ketua-dprd-buru>>

the unpreparedness of human resources, organizers, contestants, and constituents to hold a democratic party in this country. The mechanism for filling local head positions, either through general elections or elected by DPRD members, has advantages and disadvantages. Based on data from the Directorate General of Local Autonomy on evaluating the simultaneous local head elections in 2018, information was obtained that threats to public security and order still emerged. The rise of black campaigns in West Java, fake news, and terrorism when voting in Kalimantan indicated the unpreparedness of human resources.⁸⁷

Indonesia has passed all the existing models of filling local head positions. Starting from the appointment model by higher executive officers, appointments, and direct and indirect elections. Even today, the local

makin-menajam>; The feud in Pamekasan is accessed from MEMO online, "Begini Respon Masyarakat Terkait Perseteruan Bupati vs DPRD Pamekasan", (2018), online: <<http://www.memoonline.co.id/read/2528/20181105/001706/begini-respon-masyarakat-terkait-perseteruan-bupati-vs-dprd-pamekasan/>>; The feud in Jember is accessed from Faizin Adi, "Konflik DPRD dengan Bupati Jember, Mendagri Perintahkan Khofifah, Ini Kata Legislatif", (2020), online: *Jatimnet.com* <<https://jatimnet.com/konflik-dprd-dengan-bupati-jember-mendagri-perintahkan-khofifah-ini-kata-legislatif>>.

⁸⁷ In Sumatra, there were 4 cases recorded in Lahat Regency with demonstrations demanding a re-vote, in Muara Enim Regency with a case demanding a re-voting due to indications of money politics, in North Tapanuli Regency with a case of mass sweeping KPU commissioners, and Jambi Regency with the black campaign case. On the island of Sulawesi, there were also four cases spread across Sinjai Regency, with the case of a candidate pair being disqualified for being 5 minutes late in the audit report. In Sidrap Regency, the political situation was tense due to the destruction of APK. In Parigi Moutong Regency, with cases prone to logistic distribution disorders, and Makassar City, with a case of chaos between supporters of the empty box and the candidate pair. For the Papua region, there were 4 cases recorded. As happened in Puncak Regency with the shooting of polling officers. In Nduga Regency, the shooting at Kenyam airport and the dismissal of the Nduga KPUD related to the gubernatorial election. Moreover, in Paniai Regency, the postponement of voting due to KPU only passing two pairs of candidates. Meanwhile, in the provinces of Bali, West Nusa Tenggara, and East Nusa Tenggara, 5 cases occurred in Nagekeo Regency with the shooting of money politics actors during the regent election. The case in Alor Regency where supporters of the two pairs of candidates claimed victory for each other. In Southwest Sumba Regency, the case of the deployment of BKO from the NTT Police and the intimidation of witnesses by one of the candidates. And in the province of NTB, with a high level of vulnerability. The data was accessed from "Direktorat Jenderal Otonomi Daerah Kementerian Dalam Negeri", (2019), online: *Otda Kemendagri* <<https://otda.kemendagri.go.id/>>.

government system recognizes asymmetry in filling local head positions. As happened in Papua, the Special Region of Yogyakarta, the Special Capital Region of Jakarta, and Nangroe Aceh Darussalam. This does not rule out the possibility of opening up space for other areas, such as in Bali.⁸⁸

Taking into account all the aspects stated above, the ideal model for filling the position of the local head in Indonesia is an asymmetrical model by considering each region's peculiarities. This asymmetry is not only in the form of the system but is also asymmetric in determining the number of Deputy Local Heads who will accompany the Local head later.

V. CONCLUSION

The principle of compromise is resolving a problem or conflict through a norm until an agreement emerges. This is due to each region's uniqueness, so it requires a different approach so that conflicts only arise after the head election is held. Forcing the application of a certain position-filling model in a region with another local paradigm is not a wise thing. Each region has its uniqueness, which must be respected as stipulated in the Constitution. Listening to the local community's aspirations regarding the needs and conditions of their territory, formulating a policy while still observing the standard rules of the central government, and finally producing a policy full of compromises that both parties can accept is the most democratic form of democracy. Whatever the model for filling the position of the local head is decided later, as long as it is not based on a compromise on the aspirations of the local community, the model for filling the position of the local head is not a model for filling the position of a democratic local head. However, the standard rules regarding the authority of the central government must still be a reference in determining the ideal model for filling democratic local heads in the territory of the Unitary State of the Republic of Indonesia so that the central and local governments can synergize to build a just and prosperous Indonesia per the ideals of the nation and the creation of law, certainty, justice and benefit for each region under the auspices of the Unitary State of the Republic of Indonesia.

⁸⁸ Djohan, *supra* note 50.

REFERENCES

- Adi, Faizin, “Konflik DPRD dengan Bupati Jember, Mendagri Perintahkan Khofifah, Ini Kata Legislatif”, (2020), online: [Jatimnet.com <https://jatimnet.com/konflik-dprd-dengan-bupati-jember-mendagri-perintahkan-khofifah-ini-kata-legislatif>](https://jatimnet.com/konflik-dprd-dengan-bupati-jember-mendagri-perintahkan-khofifah-ini-kata-legislatif).
- Alderfer, Harold F, *Local Government in Developing Countries in The Liang Gie, Pertumbuhan Pemerintahan Daerah di Negara Republik Indonesia Jilid I Edisi Kedua* (Yogyakarta: Liberty, 1993).
- Anandya, Diky, Lalola Easter & Kurnia Ramadhana, *Hasil Pemantauan Tren Penindakan Kasus Korupsi Semester I 2021* (Jakarta: Indonesia Corruption Watch, 2021).
- Aritonang, Dinoroy Marganda, “Perkembangan Pengaturan Format Dekonsentrasi Di Indonesia” (2018) 14:2 *Jurnal Legislasi Indonesia* 199–210.
- Badan Pengawas Pemilihan Umum, *Catatan Pengawasan Pemilihan 2020*, 3d ed (Jakarta: Badan Pengawas Pemilihan Umum, 2020).
- , *Data Pelanggaran Pemilu 2017* (Jakarta: Badan Pengawas Pemilihan Umum, 2017).
- , *Data Pelanggaran Pemilu 2018* (Jakarta: Badan Pengawas Pemilihan Umum, 2018).
- , *Data Pelanggaran Pemilu 2020* (Jakarta: Badan Pengawas Pemilihan Umum, 2020).
- Badan Pusat Statistik, “Mengulik Data Suku di Indonesia”, (2015), online: [<https://www.bps.go.id/news/2015/11/18/127/mengulik-data-suku-di-indonesia.html>](https://www.bps.go.id/news/2015/11/18/127/mengulik-data-suku-di-indonesia.html).
- Bawaslu Kabupaten Bengkulu Utara, “Potret Netralitas Birokrasi Menyongsong Tahun Politik 2024 – Rilis Hasil Survei Nasional Netralitas ASN Pada Pilkada Serentak Tahun 2020”, (2021), online: [<https://bengkuluutarakab.bawaslu.go.id/potret-netralitas-birokrasi-menyongsong-tahun-politik-2024-rilis-hasil-survei-nasional-netralitas-asn-pada-pilkada-serentak-tahun-2020/>](https://bengkuluutarakab.bawaslu.go.id/potret-netralitas-birokrasi-menyongsong-tahun-politik-2024-rilis-hasil-survei-nasional-netralitas-asn-pada-pilkada-serentak-tahun-2020/).
- Beritabetacom, “Konflik Bupati Vs Mantan Ketua DPRD Buru Makin Menajam”, (2019), online: [<https://beritabeta.com/konflik-bupati-vs-mantan-ketua-dprd-buru-makin-menajam>](https://beritabeta.com/konflik-bupati-vs-mantan-ketua-dprd-buru-makin-menajam).

- Caramani, Daniele, *Comparative Politics* (United Kingdom: Oxford University Press, 2020).
- Dewa, Muhammad Jufri et al, “Analisis Hukum Pengisian dan Pengusulan Wakil Kepala Daerah dalam Sistem Pemerintahan” (2022) 4:2 *Halu Oleo Legal Research* 183–201.
- Dewi, Kurniawati Hastuti, *Menata Ulang Pemilukada Menuju Tata Kelola Pemerintahan Daerah Demokratis, Akuntabel, dan Berkelanjutan* (Jakarta: Pusat Penelitian Politik, 2016).
- “Direktorat Jenderal Otonomi Daerah Kementerian Dalam Negeri”, (2019), online: Otda Kemendagri <<https://otda.kemendagri.go.id/>>.
- Djohan, Djohermansyah, *Pengisian Jabatan Kepala Pemerintahan Daerah Secara Asimetris Dalam Bingkai Negara Kesatuan Republik Indonesia dan Pancasila* (2020).
- Fakhrudin, “Sinkronisasi Peraturan KPU Dengan Undang-Undang Pemerintahan Aceh Pada Penyelenggaraan Pilkada Serentak Di Kabupaten Aceh Tamiang Tahun 2017” (2020) 2:2 *Thesis on Electoral Governance* 56–79.
- Fauzi, Gamawan, “The Contribution Of Direct Elections For Local Leaders To The Corruption In Indonesia: Lessons Learned From Indonesian Democratic System” (2014) 7:2 *International Journal of Education* 103–110.
- Horowitz, Donald L, *Electoral Systems and Their Goals: A Primer for Decision-Makers* (North Carolina: Duke University, 2003).
- Hutasoit, Lia, “KPK Sudah Tangkap 100 Kepala Daerah, Ini Daftar LENGKAPNYA”, (2018), online: CNN Indonesia <<https://www.idntimes.com/news/indonesia/lia-hutasoit/daftar-lengkap-100-kepala-daerah-ditangkap-kpk-sejak>>.
- Ibrahim, Gibran Maulana, “Ribut dengan DPRD, Bupati TTU Tak Terima Anggaran Guru Dialihkan ke PU”, (2019), online: detiknews <<https://news.detik.com/berita/d-4772370/ribut-dengan-dprd-bupati-ttu-tak-terima-anggaran-guru-dialihkan-ke-pu>>.
- IDEA, International, *International Electoral Standards: Guidelines For Reviewing The Legal Framework of Elections* (Sweden: IDEA Publication, 2002).

- Janur, Katharina, "Konflik Pilkada, Warga Intan Jaya Terancam Kelaparan", (2017), online: liputan6.com <<https://www.liputan6.com/news/read/3085055/konflik-pilkada-warga-intan-jaya-terancam-kelaparan>>.
- Jaweng, Robert Endi, "Kritik terhadap Desentralisasi Asimetris di Indonesia" (2011) 40:2 *Jurnal Analisis-CSIS* 160–176.
- Johan, Ali Muhammad, "Sistem Pemilihan Kepala Daerah Pada Daerah Yang Memberlakukan Desentralisasi Asimetris" (2021) 5:1 *Al-Qisth Law Review* 70–98.
- JPNNcom, "Koordinasi Buruk Penyebab Kericuhan Pilkada Maybrat", (2017), online: <<https://m.jpnn.com/news/koordinasi-buruk-penyebab-kericuhan-pilkada-maybrat>>.
- Kelsen, Hans, *General Theory of Law and State* (New York: Russell & Russell, 1973).
- Labolo, Muhadam & Muhammad Afif Hamka, "Reconsidering the Indirect Elections for the Head of Region, Response towards the Current Direct Democration Mechanism System in Indonesia" (2012) 8:13 *Asian Social Science* 1–8.
- Labolo, Muhadam, *Desentralisasi Asimetrik di Indonesia: Peluang, Tantangan, dan Recovery* (Jakarta: Wadi Press, 2014).
- Lantipo, Yuliana, "Pilkada Boven Digoel ditunda, pemilihan kepala daerah di 10 wilayah Papua lain tetap berjalan", (2020), online: BBC News Indonesia <<https://www.bbc.com/indonesia/indonesia-55219688>>.
- Leemans, AF, *Changing Patterns of Local Government* (The Hague: International Union of Local Authorities, 1970).
- Mahardika, Ahmad Gelora & Sun Fatayati, "Penerapan Pilkada Asimetris Sebagai Upaya Menciptakan Sistem Pemerintahan Daerah Yang Efektif" (2020) 1:1 *Indonesian Journal of Humanities and Social Sciences* 50–67.
- Marsh, David, David Richards & Martin Smith, "Unequal Plurality: Towards an Asymmetric Power Model of British Politics" (2003) 38:3 *Government and Opposition* 306–332.
- MEMO online, "Begini Respon Masyarakat Terkait Perseteruan Bupati vs DPRD Pamekasan", (2018), online: <<http://www.memoonline.co.id/read/2528/20181105/001706/begini>>

-respon-masyarakat-terkait-perseteruan-bupati-vs-dprd-pamekasan/>.

Meyer, Thomas, *Compromise* (Jakarta: Friederich – Ebert – Stiftung (FES), 2008).

Moa, Eugenius, “Konflik Bupati dan DPRD Sikka - Mengapa DPRD Sikka Keberatan dengan Pernyataan Bupati Idong?”, (2019), online: *tribunnews* <<https://kupang.tribunnews.com/2019/02/07/mengapa-dprd-sikka-keberatan-dengan-pernyataan-bupati-idong>>.

Muhammad, Hatta Abdi & Muhammad Yusuf, “Bureaucracy and Political Parties: Political Clientelism in Contestation of Power in Tanjung Jabung Timur Regency” (2020) 5:3 *Politik Indonesia: Indonesian Political Science Review* 375–390.

Mukti, Ridwan, *Sistem Pemilihan Beragam di Indonesia Implikasi Makna Restriktif dalam Pasal 18 ayat (4) UUD 1945 Pascasarjana Fakultas Hukum Universitas Sriwijaya*, 2013).

Muluk, MR Khairul, “Systematic Literature Review On Asymmetric Decentralization” (2021) 28:2 *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi dan Organisasi* 96–105.

Murod, Ma'mun et al, “The Political Role of the Survey Agency in Indonesia Democracy” (2022) 5:2 *Journal of Local Government Issues (LOGOS)* 176–192.

Mustafa, Yusuf, Made Warka & Hufron, “Presidential Election and Vice President of the Republic of Indonesia Based on Pancasila Democratic Principles” (2019) 88:1 *Journal of Law, Policy and Globalization* 1–5.

Nasution, Muhammad Imaduddin, “Demokrasi dan Politik Minoritas di Indonesia” (2013) 4:2 *Jurnal Politica Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 313–335.

Novarlia, Irena, “Kompromi sebagai Kunci Budaya Demokrasi” (2015) 2:2 *Sosio-Didaktika: Social Science Education Journal* 194–202.

Pardede, Piki Darma Kristian & Rudi Kristian, “Analysis of Strengthening Bureaucracy Neutrality Policy Implementation in the Local Elections (A Study in North Sumatera)” (2021) 4:2 *Journal of Local Government Issues (LOGOS)* 155–169.

- Parry, Matthew, *Canada's Parliament and other political institutions*, by Matthew Parry (Canada: European Parliament, 2022).
- Raharusun, Anthon, *Desentralisasi asimetrik dalam negara kesatuan Republik Indonesia : studi terhadap format pengaturan asimetrik di Yogyakarta, Aceh dan Papua dalam periode 1950-2012* Universitas Indonesia, 2014).
- Rahmatunnisa, Mudiwati, Reginawanti Hindersah & Tri Hanggono Achmad, "Why Regions with Archipelagic Characteristics in Indonesia Also Need Asymmetric Decentralization?" (2018) 10:2 *Jurnal Bina Praja: Journal of Home Affairs Governance* 251–261.
- Reynolds, Andrew, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005).
- Setiawan, Irfan & Afira Fitri Hapsari, "The Neutrality Crisis Of The State Civil Apparatus: Practical Politics Unethic Public Bureaucrats" (2022) 10:2 *Jurnal MSDA (Manajemen Sumber Daya Aparatur)* 158–171.
- Simanjuntak, Kardin M, "Implementasi Kebijakan Desentralisasi Pemerintahan di Indonesia" (2015) 7:2 *Jurnal Bina Praja: Journal of Home Affairs Governance* 111–130.
- Smith, BC, *Decentralization: The Territorial Dimension of the State* (London: Asia Publishing House, 1985).
- Subiyanto, Achmad Edi, "Pemilihan Umum Serentak yang Berintegritas sebagai Pembaruan Demokrasi Indonesia" (2020) 17:2 *JK* 355–371.
- Surbakti, Ramlan, *Regional Autonomy as Widespread as Possible and the Supporting Factor* (Center for Institutional Reform and the Informal Sector (IRIS) University of Maryland at College Park, 2001).
- Susantri, Yulia, "Comparison Of Election Of Local Head Before And After Amendment To The 1945 Constitution" (2022) 6:1 *Syiah Kuala Law Journal* 27–39.
- Taniady, Vicko, "Optimalisasi Pembatasan Dana Kampanye Pemilihan Umum: Studi Perbandingan Indonesia dan Selandia Baru" (2021) 3:2 *Jurnal Inovasi Ilmu Sosial dan Politik (JISoP)* 91–104.

- Tauda, Gunawan A, “Desain Desentralisasi Asimetris Dalam Sistem Ketatanegaraan Republik Indonesia” (2018) 1:4 *Administrative Law and Governance Journal* 413–435.
- Taufiq, Muhammad et al, “Powers on Community-Level Deliberation: A Power Cube Approach” (2022) 54:2 *Indonesian Journal of Geography* 303–312.
- Teka, Silvester Sili, “Dialectics of Democracy in the Framework of Politics Primordialism Local Elections A Case Study of the People of West Sumba District and East Sumba District” (2020) 12:2 *Jurnal Bina Praja: Journal of Home Affairs Governance* 193–201.
- Ulum, Muhammad Bahrul, “How Democracy is Election? Reassessing Article 18 (4) Of The 1945 Constitution and Its Implication to The Regional Head Election in Indonesia” (2019) 8:2 *Jurnal Hukum dan Peradilan* 315–332.
- Umezurike, Samuel Augustine & Chux Gervase Iwu, “Democracy and Majority Rule in South Africa: Implications for Good Governance” (2016) 8:2 *Acta Universitatis Danubius Administratio* 38–55.
- USAGov, “Presidential Election Process”, (2023), online: <<https://www.usa.gov/election>>.
- Vinx, Lars, “Hans Kelsen and the material constitution of democracy” (2021) 12:4 *Jurisprudence* 466–490.
- Wahyono, Eko, “Direct Election Of Regional Heads By The People To Realize The Welfare Of The People” (2022) 3:2 *USRAH: Jurnal Hukum Keluarga Islam* 95–117.
- Yacoubian, Hagop A, “Scientific literacy for democratic decision-making” (2018) 40:3 *International Journal of Science Education* 308–327.
- Yuhandra, Erga, Suwari Akhmaddhian & Anggit Anggiatna, “The Authority Relationship: Regional Head and His Deputy in the Regional Autonomy” (2021) 8:2 *UNIFIKASI: Jurnal Ilmu Hukum* 176–185.

This page intentionally left blank