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Improvements to the Appointment of Regional Heads through Direct Elections from the Perspective of Article 18, Paragraph (4) of the 1945 Constitution

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Abstract: This study examines the constitutional ambiguity of Article 18, paragraph (4) of the 1945 Constitution of the Republic of Indonesia regarding the phrase “elected democratically,” which serves as the legal basis for regional elections in Indonesia. Although regulations have evolved through Law No. 10 of 2016 to strengthen popular sovereignty, the practice of direct regional elections has instead become trapped in a “democratic pathology” characterized by 82% dominance by capital (financiers) and TSM (Structured, Systematic, and Massive) fraud. This phenomenon results in popular sovereignty being hijacked by transactional interests. Using a legal-normative approach, this study asserts that the sole solution to safeguard the integrity of local leadership appointments lies in reconstructing the oversight model. The integration of strengthened Bawaslu authority with the digitization of participatory oversight (Gowaslu) and community cadre development (SKPP) is an absolute prerequisite for restoring the dignity of elections in alignment with the principles of deliberation and representation.

Keyword: Local Elections, Vote-Buying, Election Supervisory Agency, Participatory Oversight, Constitution.

INTRODUCTION

The constitutional basis for filling regional leadership positions in Indonesia is rooted in Article 18, paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that governors, regents, and mayors are elected democratically. However, the interpretation of the phrase “elected democratically” has sparked a long-standing debate in constitutional discourse. Constitutional law experts such as Jimly Asshiddiqie assert that this constitutional mandate constitutes an “open legal policy,” under which both direct election by the people and indirect election through the Regional People’s Representative Council (DPRD) possess valid constitutional legitimacy. In line with this, Bagir Manan argues that

the 1945 Constitution does not mandate a specific election model, provided that the recruitment process is conducted democratically and transparently.

The dynamics of regulations governing regional head elections (Pilkada) in Indonesia reflect a sharp tug-of-war of political interests. History records a drastic shift when Law No. 22 of 2014 temporarily reinstated the mechanism of election through the Regional People's Representative Council (DPRD). However, this policy faced massive rejection from civil society, which viewed it as a setback for democracy; consequently, the government responded by issuing Government Regulation in Lieu of Law (Perppu) No. 1 of 2014. This Perppu was subsequently enacted as Law No. 1 of 2015, which has been amended several times, most recently by Law No. 10 of 2016, officially restoring sovereignty to the people through direct elections. Although direct elections are considered the most ideal instrument for bringing leaders closer to their constituents, their implementation has brought about serious negative consequences. The main issue that has emerged is the high cost of politics that candidates must bear. Based on sociological data, reliance on large capital for campaigns and political operations often traps regional heads in post-election corruption to recoup their political investment. The phenomenon of "political dowries" and the involvement of third-party financial backers (cukong) not only undermine the integrity of elections but also damage the framework of clean and service-oriented local governance. Therefore, a reorientation of the system for filling local leadership positions is necessary to balance popular sovereignty with political cost efficiency.

METHOD

This research employs a juridical-normative (doctrinal) legal research method, which examines legal issues based on legal norms, principles, and theories derived from primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 2015, Law No. 8 of 2015, Law No. 10 of 2016, Law No. 7 of 2017, and Constitutional Court Rulings related to regional election disputes. Secondary legal materials consist of textbooks, scientific journals, and academic opinions from constitutional law experts.

The legal materials were collected through library research and documentation of relevant court rulings and legislation. The approach employed is the statute approach, the conceptual approach, and the case approach. Analysis was conducted qualitatively and descriptively to identify constitutional ambiguities, legal pathologies in Pilkada practice, and to formulate normative recommendations for improving the integrity of the regional head appointment process.

RESULTS AND DISCUSSION

Regulation of Regional Head Appointments in Indonesia Based on Article 18 Paragraph (4) of the UUD NRI 1945

The regulation of regional head appointments in Indonesia is an integral part of the constitutional system, directly related to the implementation of the principles of democracy, regional autonomy, and popular sovereignty. Regional heads, as leaders of regional government, hold a strategic position in administering governmental affairs and public services at the provincial, regency, and municipal levels. Therefore, the mechanism for filling regional head positions must have a strong, clear legal basis consistent with the rule of law as mandated by the UUD NRI 1945¹

¹ Jimly Asshiddiqie, *Commentary on the 1945 Constitution of the Republic of Indonesia* (Jakarta: Sinar Grafika, 2009), p. 56.

From the perspective of constitutional law, filling regional head positions is not merely understood as an administrative process of power transfer, but as a concrete manifestation of constitutional democracy at the local level. Regional heads are not merely governmental officials; they are the direct representation of the will of the people in exercising regional government functions. Therefore, the regional head election system must guarantee the emergence of leaders with strong political legitimacy, high integrity, and alignment with the broader public interest²

The constitutional basis for filling regional head positions is found in Article 18 paragraph (4) of the UUD NRI 1945, which states that "Governors, Regents, and Mayors, each as head of the provincial, regency, and municipal government, are elected democratically." The phrase "elected democratically" becomes the central basis in the debate over Indonesia's Pilkada system, as the Constitution does not explicitly specify whether elections are conducted directly by the people or through the DPRD (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 18 ayat (4)).³

Jimly Asshiddiqie explains that this phrase constitutes an open legal policy, meaning that the Constitution provides room for the legislature to determine the most appropriate model of regional head election in accordance with the nation's needs and democratic development. According to him, both direct and indirect electoral systems can be considered democratic as long as they uphold the principles of justice, transparency, and people's participation.⁴

A similar view is expressed by Bagir Manan, who states that the 1945 Constitution does not mandate a specific electoral model but provides flexibility to the legislature to choose the most appropriate system in accordance with constitutional needs. Manan argues that regional autonomy is an important instrument for expanding democratic practice while realizing community welfare at the regional level.⁵ In modern constitutional practice, direct election by the people is viewed as more reflective of popular sovereignty because the community can directly determine its leader without the mediation of political institutions such as the DPRD.⁶

Historically, the regional head appointment system in Indonesia underwent very dynamic changes. During the New Order era, regional heads were elected by the DPRD with strong central government dominance. After the 1998 reform, strong demands emerged to strengthen local democracy and decentralize power. A major shift occurred when the government issued Government Regulation in Lieu of Law No. 1 of 2014, subsequently enacted as Law No. 1 of 2015, marking a milestone in direct Pilkada regulation by formally returning the mechanism to the people after it had been redirected to the DPRD through Law No. 22 of 2014.⁷

Law No. 1 of 2015 regulates various fundamental aspects of Pilkada administration, from candidacy requirements, election stages, campaigns, voting, to the settlement of Pilkada result disputes. The law also affirms that Pilkada is conducted directly, universally, freely, secretly, honestly, and fairly as a form of implementing the principles of constitutional democracy. However, its implementation still raised various technical and institutional issues, necessitating amendments through Law No. 8 of 2015. These amendments aimed to refine the requirements for regional head candidates, the candidacy mechanism through political

² Jimly Asshiddiqie, *Introduction to Constitutional Law* (Jakarta: Rajawali Pers, 2006), p. 132.

³ The 1945 Constitution of the Republic of Indonesia, Article 18 paragraph (4).

⁴ Jimly Asshiddiqie, *Commentary on the 1945 Constitution of the Republic of Indonesia*, p. 57.

⁵ Bagir Manan, *Welcoming the Dawn of Regional Autonomy* (Yogyakarta: FH UII Press, 2001), p. 78.

⁶ Ni'matul Huda, *Indonesian Constitutional Law* (Jakarta: Rajawali Pers, 2014), p. 221.

⁷ Law Number 1 of 2015 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2014.

parties or individual channels, the strengthening of oversight functions, and the settlement of Pilkada result disputes. Further development led to Law No. 10 of 2016 as the second amendment to Law No. 1 of 2015, serving as the primary legal basis for Pilkada administration to date.⁸

Based on the analysis conducted, the success of the regional head appointment system is largely determined by three main factors: the quality of regulation, the integrity of election organizers, and the political awareness of the community. These three elements must operate in balance so that Pilkada does not merely become a five-yearly agenda but truly serves as an instrument for generating quality, integrity-driven regional leadership aligned with the interests of the people.

Legal Problems in Direct Regional Head Elections in Indonesia: Money Politics, Pilkada Result Disputes, and Electoral Fraud

a. Money Politics

The pathologies of direct Pilkada in Indonesia represent a complex and multidimensional phenomenon, not only relating to the technical aspects of election administration but also reflecting deviations in local democratic practice. One of the most dominant pathological forms is money politics, widely recognized as a serious threat to the quality of democracy. Mahfud MD states that the practice of money politics in Pilkada is a phenomenon that has been present in nearly every regional head election, both under the indirect and direct systems. In his view, the shift from DPRD-based elections to direct popular elections did not eliminate this practice but merely changed the patterns and actors involved. If previously political transactions occurred in elite spaces, in direct Pilkada the practice expanded to the general electorate.⁹

In a more structural dimension, money politics is also closely linked to the involvement of capital owners or economic actors in the political process. High political costs compel many regional head candidates to rely on external financial support, giving rise to patronage relationships and political transactions between candidates and capital holders. This situation has implications for the emergence of "policy trading" after the candidate is elected, where public policy is directed more toward meeting the interests of political investors than the broader public. This phenomenon demonstrates that money politics not only corrupts the electoral process but also directly affects the quality of post-Pilkada governance.¹⁰

The practice of money politics in direct regional head elections has shown a recurring pattern from the first Pilkada conducted in 2005 through the most recent Pilkada cycles. Money politics has not only been present as an incidental violation but has developed into part of political strategy used by candidates to secure rapid victories. Its forms have evolved over time, from cash handouts, food packages (sembako), and social assistance to the use of financial power through structured political networks.

In Pilkada 2005 as the initial period of direct elections, money politics occurred openly in many regions because the oversight system was still weak and the public lacked strong political awareness against the dangers of such practices. One example is the Tuban Regency Head Election of 2005, where the distribution of money and food packages

⁸ Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015.

⁹ Moh. Mahfud MD, *Legal Politics in Indonesia* (Jakarta: Rajawali Pers, 2017), p. 315.

¹⁰ Corruption Eradication Commission, *Study of the Political Party Funding System in Indonesia* (Jakarta: KPK RI, 2016), p. 42

(sembako) became the dominant issue, with candidates exploiting weak economic conditions to influence voter choice.¹¹

In Pilkada 2010, money politics became more structurally organized through the role of campaign teams, local political brokers, and major financiers. In the West Kotawaringin Regency Election of 2010, allegations of money politics, intimidation, and Structured, Systematic, and Massive (TSM) violations led the dispute to the Constitutional Court, which ultimately disqualified the winning candidate for proven serious violations that compromised democratic principles.¹²

In the 2020 Concurrent Pilkada held during the COVID-19 pandemic, money politics took on a more complex form. In the South Tangerang Mayor Election of 2020, allegations emerged of the use of social assistance packages (bansos) for electoral purposes, with social protection assistance being perceived as a tool to build voter political loyalty.¹³

In Pilkada 2024, money politics remains a central concern for the Election Supervisory Agency (Bawaslu), particularly in the Concurrent Governor, Regent, and Mayor Elections of 2024. Numerous reports indicate increasing transactional political practices through cash distribution, food package distribution, and the leveraging of assistance programs tied to electoral interests. Bawaslu has reaffirmed that giving food packages during Pilkada is subject to criminal sanctions under Article 187A of Law No. 10 of 2016.¹⁴

b. Pilkada Result Disputes and Electoral Fraud (TSM)

Beyond money politics, another highly prominent problem in direct Pilkada is the high number of result disputes submitted to the Constitutional Court. Electoral result disputes arise when candidate pairs believe there have been violations, frauds, or errors affecting the final vote count, leading to objections against the KPU's result determination. This situation shows that local democracy faces not only the problem of political transactions but also issues of electoral legitimacy and trust in election organizers.¹⁵

The Constitutional Court has the authority to examine, adjudicate, and decide disputes over regional head election results as a form of protection for the principle of electoral justice. Disputes submitted to the Court generally involve vote margin, allegations of Structured, Systematic, and Massive (TSM) violations, money politics,

¹¹ The post-reform Pilkada study journal explains that in the 2005 Tuban Regency Regent and Deputy Regent Election, the practice of distributing money and basic food supplies was one of the early forms of money politics in direct Pilkada which influenced the legitimacy of the election results

¹² Constitutional Court of the Republic of Indonesia, Decision Number 45/PHPU.D-VIII/2010 concerning the Dispute over the Results of the 2010 Regional Head Election of West Kotawaringin Regency; Hukumonline, "MK Hears the West Kotawaringin Regional Head Election Dispute", accessed on April 20, 2026.

¹³ Kompas.com, "Social Assistance and Allegations of Money Politics in the 2020 Regional Elections in the Spotlight," accessed April 20, 2026.

¹⁴ Election Supervisory Agency of the Republic of Indonesia, "Provision of Food Packages in Regional Elections Can Be Criminalized Based on Article 187A of Law Number 10 of 2016"; Detik News, "Watch Out! Those Who Give and Receive Food Packages During Regional Elections Can Face Criminal Sanctions", accessed on April 20, 2026.

¹⁵ Jimly Asshiddiqie, Introduction to Constitutional Law (Jakarta: Rajawali Pers, 2016), p. 301.

abuse of incumbent authority, and administrative violations deemed to have affected the final election results.¹⁶

Based on the analysis conducted, the high number of Pilkada disputes reflects the serious challenges in maintaining the integrity of the democratic process. In the Concurrent Pilkada 2024, whose disputes were processed in 2025, the Constitutional Court registered approximately 310 Electoral Result Dispute (PHPU) cases for regional heads, consisting of disputes over governor, regent, and mayor elections. This number demonstrates a high level of dissatisfaction among Pilkada participants with election results.¹⁷

Of the 310 registered cases, the Constitutional Court only proceeded with approximately 40 cases to the evidentiary stage, while other cases were declared null or rejected. This indicates that not all petitions meet the formal and material requirements for further examination. Nevertheless, the large number of cases filed remains an indicator that trust issues regarding Pilkada results remain very high. In Riau Province, for example, the Constitutional Court in 2025 decided seven Pilkada result dispute cases. Most petitions were rejected, while the Siak Regency Pilkada dispute proceeded to the witness and expert examination stage.¹⁸

The high number of Pilkada result disputes also leads to delays in the inauguration of elected regional heads, as they must await final Constitutional Court rulings. This causes the regional government transition process to slow down and potentially disrupts the effectiveness of public services. Therefore, Pilkada result disputes are not merely electoral law issues but are directly linked to regional government stability and legal certainty in local democracy.

Strategies for Improving Regional Head Appointments Through Strengthening Bawaslu Oversight and Active Public Participation

Improvement of the regional head appointment process through direct election must begin with regulatory reform in the context of repealing and replacing the three laws governing gubernatorial elections. Understanding direct Pilkada through three separate laws is difficult for the public as holders of popular sovereignty. Therefore, a new law must be enacted governing the procedures for filling regional head positions in Indonesia.

This must also be accompanied by the strengthening of the oversight system and increased public participation in maintaining the integrity of Pilkada administration. The various pathologies including money politics, Pilkada result disputes, abuse of power, and TSM violations demonstrate that the primary weakness of Pilkada lies not only in legal norms but also in the weakness of oversight in its practical implementation. Therefore, strengthening the functions of the Elections Supervisory Agency (Bawaslu) and active public involvement become crucial steps in realizing Pilkada that is honest, fair, and democratic.¹⁹

One avenue for improving Bawaslu's effectiveness in oversight is through enhancing Human Resources (SDM) with a more open and fair recruitment system, free from political interests and emphasizing a good track record of integrity. Bawaslu as an election supervisory institution holds a strategic role in preventing, monitoring, and enforcing against various

¹⁶ Constitutional Court of the Republic of Indonesia, Constitutional Court Regulation Number 14 of 2024 concerning Stages, Activities, and Schedule for Handling Disputes Regarding the Results of the Election of Governors, Regents, and Mayors.

¹⁷ Bimata.id, "2024 Regional Election Dispute Hearing: Constitutional Court Assigns 310 Cases to Three Panels of Judges," January 9, 2025, accessed April 20, 2026

¹⁸ Riau24, "Constitutional Court Decides on Seven Pilkada Disputes in Riau", February 6, 2025, accessed on April 20, 2026, explains that six applications were rejected and the Siak Regency Pilkada dispute continues to the stage of examining witnesses and experts

¹⁹ Jimly Asshiddiqie, *Introduction to Constitutional Law* (Jakarta: Rajawali Pers, 2016), p. 305.

forms of Pilkada violations, from the candidacy process, campaigns, logistics distribution, voting, vote counting, to the determination of election results.

In the regulatory dimension, Bawaslu is also authorized to receive public reports regarding money politics, misuse of state facilities, non-neutrality of Civil State Apparatus (ASN), and manipulation of the permanent voter list. However, in practice, oversight effectiveness still faces obstacles such as limited authority, insufficient human resources, local political pressure, and low public participation in reporting violations. This necessitates regulatory changes, specifically amendments to Law No. 17 of 2017 on General Elections and revisions to Bawaslu Regulations (Perbawaslu) in the context of structuring election-related legislation.²⁰

Based on the analysis conducted, Pilkada reform must be directed at two main aspects: first, regulatory renewal in the legislative science dimension, including the repeal and replacement of Law No. 1 of 2015 as last amended by Law No. 10 of 2016, and renewal through amendment of Law No. 7 of 2017 to strengthen election organizer institutions at the regional level. Bawaslu must be granted stronger authority to enforce violations, particularly regarding money politics and TSM violations, so that oversight is not merely administrative but also has effective legal enforcement power. Transparency in campaign financing, political financing audits, and oversight of the use of social assistance must also be tightened to prevent transactional political practices.²¹

On the other hand, the community must be encouraged to play an active role in genuine Pilkada oversight, not only as voters but also as real monitors of ballot distribution, voting and vote counting processes, money politics reporting, and the neutrality of government officials. To encourage genuine public participation in oversight, there must be a reward mechanism for every community member reporting fraud, and this must be explicitly established in KPU Regulations (PKPU) and Bawaslu Regulations (Perbawaslu).

Genuine participatory oversight through direct reporting to Bawaslu, monitoring at polling stations (TPS), documentation of violations, and cooperation with media and civil society organizations will narrow the space for fraud. Thus, strengthening election organizers and genuine active public participation become the primary keys to enabling direct Pilkada to produce regional leaders who truly emerge from the will of the people, not from financial power and political transactions.²²

CONCLUSION

The regulation of regional head appointments in Indonesia is constitutionally grounded in Article 18 paragraph (4) of the UUD NRI 1945, which stipulates that governors, regents, and mayors are elected democratically. This provision is elaborated through Law No. 1 of 2015, Law No. 8 of 2015, and Law No. 10 of 2016, which regulate the mechanism for direct regional head elections by the people. Additionally, implementing regulations such as Government Regulations and KPU Regulations (PKPU) further reinforce the technical administration of Pilkada to proceed in accordance with the principles of democracy, justice, and legal certainty.

²⁰ Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, particularly concerning the duties and authorities of the Election Supervisory Body.

²¹ Corruption Eradication Commission, Study of the Political Funding System and Corruption Prevention in Regional Elections (Jakarta: KPK RI, 2021), p. 58

²² Moh. Mahfud MD, Legal Politics in Indonesia (Jakarta: Rajawali Pers, 2017), p. 321; Fitriyah, "The Phenomenon of Money Politics in Regional Elections," *Politika: Journal of Political Science*, Vol. 3, No. 1 (2012), p. 8

The implementation of direct regional head elections still faces serious problems, particularly money politics, Pilkada result disputes at the Constitutional Court, and various forms of Structured, Systematic, and Massive (TSM) fraud. Money politics has continuously evolved from cash and food package distribution to the exploitation of social assistance and the power of political capital. The high number of Pilkada result disputes indicates the continued weakness of electoral result legitimacy and low trust in election organizers. These conditions demonstrate that the primary problem with Pilkada lies not in the electoral system itself but in the weakness of political integrity, the high cost of democracy, and the low legal awareness of the public.

The strategy for improving regional head appointments through direct election must be focused on regulatory renewal in the legislative science dimension, including the repeal and replacement of Law No. 1 of 2015 as last amended by Law No. 10 of 2016, and renewal through amendment of Law No. 7 of 2017 to strengthen election organizer institutions at the regional level. Bawaslu must be strengthened in overseeing money politics, campaign financing transparency, and law enforcement against Pilkada violations in the aspect of Human Resources (SDM). Public participation must also be encouraged through a reward mechanism for reporting violations, as established in KPU Regulations and Bawaslu Regulations. With effective oversight and high public participation, direct Pilkada will better produce regional heads who genuinely emerge from the democratic will of the people.

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