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# General Election Of The Regional Head In The Local Government System (A Study in Makassar)

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**Abstract:**The purpose of this research is to analyze the implementation of democratic regional head election in local government system and analyze and explain and find the factors that influence the implementation of regional head elections in the system of local government. This research is expected to add treasury treasures in the development of jurisprudence, especially the law regarding the election of regional head. The results of this study are expected to be a new treasure in the framework of the formulation and in particular on the development of norms regarding the rules of legislation on elections that are better and democratic.

This study is a descriptive nature of research that describes the phenomenon of law with regard to the implementation of local elections in a lansgung local government. The approach used is the empirical approach of research on the implementation of legal rules with regard to the implementation of regional head elections. directly under applicable laws and regulations.

The results show that the direct election of regional heads in the local government system has not been in accordance with the principles of democracy, and there are still many violations committed by both election participants and election organizers. the factors influencing the election organizer are the factors of legal substitution which often change due to the requirement with the political interest, the election organizer factor that is not integrity, the permissive culture factor of society. In order to realize fair, honest, and integrity electoral organizer, the election monitoring mechanism should be closely monitored not only by Bawaslu but also supervisors formed by the community. The organizer of the election of regional head especially KPU, KDP, Bawaslu and Panwaslu, and the District Supervisory Committee must synergize in carrying out its function with one objective namely the implementation of a qualified direct election that gave birth to regional leaders with integrity.

**Keyword:** General Election, The Local Government System

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#### I. INRODUCTION

The provisions of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia stipulates that the Governors, Regents and Mayors respectively as heads of provincial, district and municipal governments are elected democratically. This is an indication that the local elections are held directly and elected by the people, although the disbursement of regional constraints can also be carried out by representative institutions. Elections are an important tradition, as a consequence of the urgency of elections as a means that can be used to achieve and or maintain the status quo for the regime that wants to rule, or who continue to want power. If elections are implemented in this context, then the legitimacy and status of the qou are at stake, not about the abstract democracy and blurred criteria.

A free and fair general election is an important pillar of democracy, because it will produce a government with strong political legitimacy from the people. Conversely, undemocratic elections will result in the lack of legitimacy and popular support to their government, as stated in the Declaration of Principles for Election that: Genuine democratic elections are a requiste condition foR democratic governance, because they are the vehicle through which the people of a country freely express their will, on a basis estabished by law, as to

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who shall have the legitimacy to govern in their name and in their interest. Achieving genuine democratic elections is a part of establishing broader processes and institutions of democratic governance, <sup>1</sup>

It has become a phenomenon that the election of heads of regions is seen by society as a manifestation of the wishes of certain groups or parties, regardless of what the real wish of the people as the holder of sovereignty. As a result when the head of the area has been lifted, then sometimes the policy is considered contrary to the values of democracy and sovereignty, because it does not side with the people, but more oriented to the interests of a handful of people or groups. This is what causes public restlessness and anxiety, so it becomes a motivation to reform.

The demands of reform ultimately paid off, and made the election of regional heads elected directly by the people while still maximizing the principles of direct, public, free and confidential plus fair and just.

Furthermore, in the course of history has recorded the implementation of two stages of elections, namely the first election to vote for legislators and the second to elect the president and vice president directly in a package. With the success of the direct presidential election, the process of democratization of political life in Indonesia began to translate down to the regional level, ie by the start of direct regional head elections (hereinafter referred to as direct elections).

# II. FORMULATION OF THE PROBLEM

Based on the background of the above problem, it can be formulated the problem as follows: How is the implementation of democratic regional head elections in the system of local government? and What factors affect the implementation of local elections in the local government system?

#### III. THEORETICAL FRAMEWORK

### 1. State of Law (The Rule Of Law)

Basically, the implementation of regional head elections is a manifestation of constitutional democracy (democratishe rechtsstaat), thus the concept of the rule of law has laid down the basic principles for the conduct of elections and the election of regional heads, or in other words the organization of general disposal is always based on the principles of the state law. For Indonesia, the concept of a state law has been affirmed in Article 1 paragraph (3) of the 1945 Constitution that "the State of Indonesia is a state of law" Conceptually there are five concepts of the rule of law namely; Rechtsstaat, Rule Of Law, Socialist Legality, <sup>2</sup> Islamic Nomocracy, and State of Law (Indonesia), and the five terms of each legal state have their own characteristics. In the Indonesian literature, the translation of the legal state of the term in Dutch "rechtsstaat", although in continental European countries uses different terms with respect to the rule of law. In France for example, using the term etat de droit. While in Germany and the Netherlands used the same term that is rechtsstaat. The term etat de droit or rechtsstaat used in Contemporary Europe is terms that are different from the English legal system, although the expression of legal state or state according to law or the rule of law tries to express an essentially the same idea. In English terminology known as the expression of the state according to law or according to the rule of law.

Muhammad Tahir Azhari, explains that the idea of a state of law is actually preceded by Plato's account of "no moi". Mohammad Tahir Azhari, *Negara Hukum*, Bulan Bintang, Jakarta, 1992, hlm. 73-74. Then developed the concept of rechtsstaat, the rule of law, socialist legality, the state law of Pancasila, and nomokrasi Islam; but the term law state (rechtsstaat) became known in Europe in the 19th century. In accordance with van der Pot-Donner disclosed that "Het woord 'rechtsstaat' comt pas de negentiende eeuw in zwang, maar het denkbeeld is veel ouder". While the use of the term "the rule of law" became famous after the work of A.V. Dicey in 1885 which is famous for the title of Introduction to the Study of the Law of the Constitution.

The history of the emergence of the term rechtsstaat and the rule of law, in Hadjon's claim, that the rule of law, was born by a different legal system background with rechtsstaat, born as a reaction against absolutism, is therefore revolutionary and based on a continental law system called civil law. Obviously different from the term in the rule of law, whose development occurs evolutionarily, and based on common law law. However, in its development, the differences in the background need not be contradicted, because they lead to the same goal, which is aimed at realizing the protection of human rights. <sup>6</sup>

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<sup>&</sup>lt;sup>1</sup> Pogge, Thomas W., The Influence of the Global Order on the Prospects for Genuine Democracy in the Developing Countries, Journal, 2001, Vol. 14, p. 236

<sup>&</sup>lt;sup>2</sup> La Ode Husen, Negara *Hukum, Demokrasi dan Pemisahan Kekuasaan*, UMI-Toha, Malkassar, 2009, hlm. 1

<sup>&</sup>lt;sup>3</sup> Allan R.Brewer – Carias, *Judicial Review in Comparative Law*, Cambridge University Press, 1989, hlm.7.

<sup>&</sup>lt;sup>4</sup> Van der Pot – Donner, bewerkt door L.Prakke, met mederwerkin van J.L.De Reede en G.J.M.van Wissen, *Handboek van Het Nederlandse Staatsrecht*, Zwalle, W.E.J.Tjeenk Willink, 1989, hlm. 158.

<sup>&</sup>lt;sup>5</sup> Plilipus M.Hadjon, *Perlindungan Hukum ...op. cit.*, hlm. 72.

<sup>&</sup>lt;sup>6</sup> Plilipus M.Hadjon, *Perlindungan Hukum ...op. cit.*, hlm. 72.

The idea of a "state of law" has been put forward by Plato in his writings on "nomoi". Then developed the concept in continental Europe with rechtsstaat, the concept of anglo saxon with the rule of law and other concepts. In the development of these concepts, also emerged the views of scholars about the state of law, for example Kant explained the principle of a formal law state, J. Stahl proposed the view of a material legal state, Dicey with his concept of the rule of law, and so on. Prior to the advent of Anglo Saxonism, it had first appeared polizei staat in reaction to the ancient regiem, an absolute governed state in Europe. At that time, absolute power prevailed throughout Europe, for example the time of Louis XIV in France was famous for the phrase "L'etat c'est moi" (the state is me). Absolute power applies not only in France but also in the Netherlands under Philip II. Similarly in England since the reign since King William has run an absolute system of government, even during Henry II, not only was England ruled in absolute but also conquered Scotland and Ireland.

The concept of an Anglo Saxon legal state or the rule of law can be understood by reference to Dicey's approach, in his attempt to discuss the rule of law in England. The centuries-old history of absolute British rule has provided a valuable inspiration to Albert Venn Dicey in giving birth to his work of Introduction to the Study of the Law of the Constitution, published in 1885, which is a very valuable work in understanding Anglo Saxon. Although the idea of the state of law was long ago, and begins with Plato's notes on "nomoi", there was a growing understanding of the rule of law among the "rule of law". In accordance with the disclosed Brewer-Carias, namely: "..., Dicey did not invent the dinotion of the rule of law although he was the first writer to systematize and analyze the principle".

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Albert Venn Dicey gives the definition of the rule of law by saying three things:

- (1) the absolute predominance of the law;
- (2) equality before the law; and

(3) the concept according to which the Constitution is the result of the recognition of individual rights by judges. Dicey explains that "The absolute supremacy or predominance of the regular law as opposed to the existence of the arbitration of prerogatives, or even the wide discretionary authority on the part of the government" Equality before the law in Dicey's view that all citizens are equal before the law, the same subjugation of all classes to the ordinary law of the land by the ordinary court. 8 It can also mean that no one who is above the law, both state government officials and ordinary citizens, is obliged to obey the same law. The rule of law in this sense that state officials are not free from the obligation to comply with laws governing ordinary citizens or from the ordinary jurisdiction of justice. Thus unknown state administrative justice in the Anglo Saxon system. Brewer-Carias said: "... Dicey's concept of the rule of law ensures that all individuals, including public officials, are governed by the ordinary law in ordinary courts, it's naturally includes any idea of special administrative courts in the French manner"9

H.W.R.Wade identifies five aspects of the rule of law, namely "First, ... all governmental action must be taken according to the law, ....Second, that government should be conducted within a framework of recognized rules and principles which restrict discretionary power..... Third, that disputes as to the legality of acts of government are to be decided upon by courts which are wholly independent of the executive,... . Fourth, that the law should be even - handed between government and citizen, .... And fifth, ... that no one should be punished except for legally defined crimes, ... 10,77

Against the views expressed by Wade above, by Joseph Raz put forward a more descriptive view ie "... all laws should be prospective, open and clear; laws should be relatively stable; the making of particular laws should be guided by open, stable, clear and general rules; the independence of the judiciary must be guaranteed; the principles of natural justice must be observed; the courts should have review powers over the implementation of

<sup>&</sup>lt;sup>7</sup> A.V. Dicey, An Introduction to the Study of the Law of the Constitution, 'Introduction', by E.C.S.Wade, 10<sup>th</sup> edn., London, 1973, hlm.202,

<sup>&</sup>lt;sup>8</sup> Philipus M.Hadjon, *Perlindungan hukum ...op.cit.*, hlm. 80.

<sup>&</sup>lt;sup>9</sup> Philipus M.Hadjon, *loc. cit.* 

<sup>&</sup>lt;sup>10</sup> H.W.R.Wade, Administrative Law, Oxford, 1984, hlm. 22-24; dalam Brewer – Carias, op. cit., hlm. 41,

those principles; the courts should be easily accessible; and the discretion of the crime prevention agencies should not be allowed to hinder the law". 11

# 2. Theory of State Sovereignty

The idea of sovereignty was first proposed by Jean Bodin in his book "Six Livres de la Republique." The term sovereignty is derived from the word "Sovereign", in French Souverainite; in English, sovereignty, in Latin, superanus, which means supremacy or above and control everything. Sovereignty is superior, supreme, or preeminent. Sovereignty is supreme authority (sovereignty is supreme authority). Sovereignty is the ultimate power, in which every state is governed (Sovereignty is the supreme power by which any State is governed). 12

The state's sovereignty is inherent in all countries, each country has its own principles of equality and self-determination, equality of sovereignty and independence, without the interference of domestic affairs of the state, of the prohibition of threat or the use of force and universal respect. Sovereignty is to whom a citizen entrusts the highest authority and duties of his government. (The sovereign is the person to whom the Nation has confided the supreme power and the duty of governing). Sovereignty focuses on issues of authority, the right to govern or govern. Sovereignty means: 1) Almighty, authority, or rule (Supreme dominion, authority, or rule; 2) The highest political authority of an independent state ... supremacy, the right to demand obedience. (The supreme political authority of an independent state ... Supremacy, the right to demand obedience). A sovereign state "is not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign State or to foreign law other than public international la). 13

# 3. Democracy

The original democratic state was born out of the idea of the relationship of the State and the law of Ancient Greece and was practiced in the life of the country between the 4th century to the sixth century. At that time, in terms of implementation, then democracy in practice is direct (direct democracy). means the right of the people to make political decisions directly executed by all citizens in stages based on the majority procedure. This immediate nature can be effectively carried out because the city state of Ancient Greece took place in simple conditions with the territory of the State, which is limited to a city and its surrounding areas with a very limited or less population in one country.

Democracy has an important meaning for the people who use it, because democracy is the right of the people to determine their own way of life of a country's organization. The term democracy comes from Greece, demos (people) and kratos (power), the term democracy has been known since the 5th century BC, which was originally a reaction of the dictatorship in the ancient Greek countries. According to the Dictionary of Law, democracy (democracie) is the highest form of government or power where the highest source of power is the power (to) the people (an). Meanwhile in the dictionary Dictionary Webters defines, democracy is a government by the people where the highest power is in the hands of the people and run directly by them or their elected representatives under a free electoral system. 14

Hendry B. Mayo provides an understanding of democracy as follows; A democratic political system is one in which public policies are made on a majority basis, by representatives subject to effective popular control at periodic elections which are conducted on the principle of political equality and under conditions of political freedom<sup>15</sup> In other parts of C.F.Strong give the definition of democracy as: "a system of government in which the majority of the rule grown members of a political community participate through a method of representation which secures that the government is ultimately responsible for its actions to that majority. In other words, the contemporary constitutional state be based on a system of democratic representation which guarantees the sovereignty of the people". 16

#### IV. DISCUSSION

#### Implementation of local direct election

The election of regional head is a manifestation of democracy in two ways: direct election and representation, although Article 18 of the 1945 Constitution does not provide assertion that the election of

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<sup>&</sup>lt;sup>11</sup> Brewer - Carias, op. cit., hlm. 41; dikutip dari Joseph Raz, "The Rule of Law and its Virtue", 93 Law Quarterly Review, 1977, hlm.198-202, <sup>12</sup>Wheaton, Henry, Elements of International Law. 8th ed. Boston: Little, Brown, and Company, 1866, hlm. 31

<sup>&</sup>lt;sup>13</sup>Steinberger, Helmut, *Sovereignty*, In Encyclopedia of Public International Law, edited by Rudolf Bernhardt. Amsterdam: North-Holland Elsevier, 2000, hlm. 512

Anonimous, What is Democracy, United State Information Agency, 1999, hlm. 4

<sup>&</sup>lt;sup>15</sup> Moh, Mahfud MD, Demokrasi dan Konstitusi Di Indonesia, Studi Tentang Integrasi Politik Dalam Kehidupan Ketatanegaraan, Rineka Cipta, Jakarta, 2000, hlm. 20

<sup>&</sup>lt;sup>16</sup> C.F.Strong, *Modern Political Constitutions*, Sidgwick & Jackson Limited, London, 1960, hlm.13

regional heads of governors and regents / mayors is elected directly, In this connection according to Andrew Reynolds, in which the votes obtained in the election translate into seats won in parliament by parties and candidates. <sup>17</sup>

It is also explained by Pratikno that the election is a political mechanism to convert people votes (votes) to representatives of the people (seats) Electoral system can be interpreted broadly or narrowly (Dieter Nohlen), broadly election system is all processes related to voting rights, electoral administration and voting behavior. Narrowly defined as the way voters can express their political choices through voting, in which the voice is transformed into seats in parliament and public officials.

Hierarchically, the implementation of democracy in both the unitary state and federal state is implemented in stages, namely national and local or state level. In Indonesia at the present time, the people's disbelief in the political elite makes the process of local election lead to democracy with direct election, the constitutional mandate as stipulated in Article 18 of the 1945 Constitution, that the election of provincial and district / city heads is implemented democratically.

Nationally in Indonesia in 2015 the pilkada was held directly and for the first time held simultaneously in 224 local governments throughout Indonesia. It therefore needs to be analyzed in a philosophical juridical manner within the framework of a democratic legal state and local democracy, the principle of decentralization and the process of public policy and the participation of local people's politics. It is also deemed necessary to analyze the extent to which the implementation of provincial and district / municipal elections has been carried out in accordance with the principles of the rule of law and the exercise of the principles of electoral administration so that local democracy in the Indonesian state has taken place in local political reform.

Meanwhile, from the real theoretical aspect, democracy itself is still a tentative solution in solving various constitutional and governmental problems. In reality, the ability of people implementing democracy must have sufficient capability to avoid the tendency of democratic misuse itself. Democracy should be used for common purposes and interests, Without a common goal, there is no basis for common priorities. Without priority, there is no basis for discerning private interests and claims with the state. Therefore, anomic democracy occurs when there is a conflict between a common goal (state) with personal / group interests, which occurs between the executive, the cabinet, the parliament, and the bureaucrat. Anomic democracy is a politics of democracy to be just an arena of affirmation of conflicting interests, no longer as an arena where the process of building common goals is done. This anomic democracy arises from the success of democracy itself.

From the data shows that the direct election of regional heads that have been held in the city of Makassar took place well, in accordance with the public opinion 75% stated good, 34% said very good, and 4% said less good. Based on these data show that the prospect of democracy in Makassar City will be better. nOn the other side of the democracy era) there has been a change in the electoral system and the political system often raises many new problems, especially in the implementation of local elections simultaneously. There has been progress in democracy on the basis of a heterogeneous national tradition, such as Indonesia, aimed at creating a transition of power from a closed system of power to a more open system of power which is done in a peaceful way without causing bloodshed as it does in the system- authoritarian. That is, the authoritarian system of power controlled by the leader is closed in practice always act authoritarian as well although every act and policy always on behalf of the people and democracy.

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Developed and modern countries apply democratic electoral systems. State interventions in the electoral process do not look as strong as in countries where culture is still dominated by feudal politics. The implementation of the election is well supervised and the involvement of the monitoring parties is given a good room without intimidation. The United States is a republic that has a federal form of government, with elected officials at the federal (national), state and local levels. At the national level, the head of state, the President, is elected directly by the people, through elections. In modern times, voters almost always vote in the popular voice of the country. For Indonesia, the election after the reformation has shown that the election of regional head is not only qualified, but also with integrity.

Democracy has become an important aspect for both the state and the federal state as it relates to governance with the division of power vertically. In addition there is a national political system in which there is

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<sup>&</sup>lt;sup>17</sup> Elklit, Jørgen, Reynolds, Andrew, A framework for the systematic study of election quality, Journal, Democratization, Vol. 12, Isue. 2, 2015. P.147

a sub-regional political system in the state administration system. The separation of local democracy does not mean that there is any determination of democracy or even democracy differences from its parent. Local democracy is intended as an integral part of democracy in Indonesia in the recruitment of political elites in local government. Local democracy is part of the political sub-system of a country whose degree of influence lies within the system of local government. In Indonesia Local democracy is a sub-system of democracy that provides opportunities for local government in developing the life of local government relations with the people in their environment. Since the reform era, democracy has led to participatory or direct democracy, one of which is because many political officials do not perform their responsibilities well, so their legitimacy is weak.

On the other hand it raises the people's disbelief on the ruler encouraging the recruitment of political officials toward direct demography. So it is not surprising that the recruitment of almost all political positions is carried out in a democratic format that moves on direct state and society relations. Starting from the election of members of DPR, DPD, and DPRD. Then proceed with the presidential and vice presidential elections. In the phase of direct democracy this is a new era of political reform in Indonesia which was first held since the independence of Indonesia. This national-scale political recruitment is a development of democracy that gains world recognition for its success.

Election of regional head is a democratic process that will equalize the legitimacy with the existence of DPRD which has been chosen directly. Elections of regional heads, a momentum that still provides various problems in the implementation. This is related to participatory democracy that will be done this is caused by the sovereignty of the people of the region in the elite is still colored by unclear, both from the work procedure of the organizers as well as the participants and the position of the voters. In terms of the sovereignty of the people of the region, local democracy is built to provide the portion that should be gained by local people in the provision of legitimacy to the regional head. So far, the people of the region give sovereignty only to the local legislative only - through legislative elections.

Referring to the concept of Tries politica of Montesquieu's teachings that the separation of powers over the three state institutions to the context of local government lies with the executive and legislative branches of the region, while the judiciary remains a centralized power of the Supreme Court. This is related to the pattern of central government relations in the principle of decentralization. People's sovereignty within the framework of the governance system can be divided into the national and local democratic hierarchy of its political recruitment procedures. The mistrust of the people and the reform era prompted direct elections. This is not directly related to whether or not democracy is good, because in other countries there are also variations in the implementation of democracy, both direct, representative and even appointment. The degree of importance is the election of an accountable political arena in accordance with the needs for achievement of its people. <sup>18</sup>

Decentralization is one of the principles in the administration of government that aims to share power in the administration of government close to the people. Meanwhile, a stable political and government decentralization can be undertaken. Decentralization can be accommodated by sharing of power, sharing of revenue, and strengthening the locality, in addition to recognition and respect for regional identity. In connection with the separation / sharing of power (sharing of power) then devolutionary devolution becomes important. Especially in this era of reform that will bring local elections to the elite executive directly will certainly happen strengthening in the system of local government. Decentralization is a form of relationship between the central government and regional governments that generally have two forms: Debvolution and deconcentration. In ideographic Indonesia we have known the principle of co-administration or medebewind as part of decentralization. Based on the political sphere of the delegation, the decentralization associated with the autonomy of governance in the regions is devolution. Deconcentration is still an extension of central policy in the regions. 7 This decentralization principle provides an opportunity for the regions to be able to take care of selfgoverning households while remaining within the framework of a unitary state system. With this principle also the outline of recruitment, responsibility and political accountability can be implemented and is final in local government. Based on the principle of decentralization, public relations and local government are within the corridors of regional democracy.

The involvement of local government in managing its authority is a freedom that aims to develop regional democracy and regional development which in turn leads to the welfare of the people in the regional work area. In its development the principle of devolution-based decentralization has undergone a fundamental change. One example of such a national issue is the election of regional heads in both the provincial and district and city governments. Based on Law No. 5 of 1974 the recruitment of regional executives is in the regional legislative areas with intervention from the central government. Based on Law No. 22 of 1999, the regional head

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<sup>&</sup>lt;sup>18</sup> La Ode Husen & Husni Thaamrin, Hukum Konstitusi, Ksepakatan (Agreement dan Kebiasaan (Custom) Sebagai Pilar Konsvensi Ketatanegaraan, CV.Social Poitic Genius, (SIGn) Makassar, 2017,, hlm'42

is elected by the regional legislature independently. However, since the enactment of Law Number 32 Year 2004, Law No. 23 of 2014, and lastly with Law No. 7 of 2017, the election of regional heads is based on participatory local democracy, in which the local people directly elect directly. Meanwhile, the implementers or election organizers based on two previous regional government laws are in the regional legislature. Furthermore, for the regional head elections to be held remain in the Regional General Election Commission. In this case there is a big leap in local executive recruitment. The spirit of decentralization has shifted from the central government's circle toward the sovereign people's region. This should be balanced with a clear implementation format both in politics, law and state administration. This relates to the level of vulnerability and the enormous challenge in conducting direct local executive elections. The emerging conflicts are also increasingly complex from conducting elections. It appears that from the direct election of regional heads, there has been shifting from major decentralization to major deconsentration or even bringing about decentralization as the extreme side of decentralization.

# 1. Influential Factors on the Implementation of Regional Head Election

Analyzing the factors influencing the implementation of the Regional Head Election In Makassar City is consistent with the legal state theory foundation, and the legal system is understood and developed as a unified system in which there is (a). element of legal method (instrumental element); (b). institutional elements (institutional elements); and (c). cultural elements or behaviors of legal subjects with rights and obligations or authorities prescribed by legal norms (subjective and cultural elements). In addition, the factors affecting the implementation of Pemilukada are (a) the objective factor, namely the element of legal principle (instrumental element); (b). institutional elements (institutional elements) and the objective conditions of society when making decisions; and (c) the dominant idea of decision-making (d) the legal circumstances prevailing at the time of decision-making.

From the aspect of legal substance, the laws and regulations governing the election and the election of regional heads are influenced by the liberal doctrine of capitalism and socialism. The doctrine of socialism is different from the doctrine of capitalism in providing understanding and application of democracy both in terms of substance and technical implementation. The capitalist doctrine requires the prioritization of legal certainty and gives more protection to rulers and investors.

From legal culture became a very influential element in the implementation of the Regional Head Election, the results of this study indicate that 90% of respondents stated that the legal culture of society affects implementation local election. This legal culture should be well understood because for the democracy state always try to give wide opportunity to the participation of society determine the pattern and and the quality of election.

# **V.CONCLUSION**

- 1. The results show that the direct election of regional heads in the local government system has not been in accordance with the principles of democracy, and there are still many violations committed by both election participants and election organizers.
- 2. The factors influencing the election organizer are the factors of legal substitution which often change due to the requirement with the political interest, the election organizer factor that is not integrity, the permissive culture factor of society. In order to realize fair, honest, and integrity electoral organizer, the election monitoring mechanism should be closely monitored not only by Bawaslu but also supervisors formed by the community. The organizer of the election of regional head especially KPU, KDP, Bawaslu and Panwaslu, and the District Supervisory Committee must synergize in carrying out its function with one objective namely the implementation of a qualified direct election that gave birth to regional leaders with integrity.

#### **REFERENCES**

- [1]. Algra, N.E. dan H.R.W.Gokkel. 1983, Kamus Istilah Hukum, Fockema Andreae, Belanda-Indonesia (Fockema Andreae's-Rechtsgeleerd Handwoordenboek). Terj. Saleh Adiwinata, A.Teloeki, dan Boerhanuddin St.Batoeah, Jakarta, Bina Cipta,
- [2]. Assat. 1951, Hukum Tata Negara Republik Indonesia Dalam Masa Peralihan, Bulan Bintang, Jakarta,
- [3]. Azhari, 1995, Negara Hukum Indonesia, Analisis Yuridis Normatif Tentang Unsur-Unsurnya, UI-Press, Jakarta
- [4]. Bagir Manan dan Kuntana Magnar, 1993, Beberapa Masalah Ketatanegaraan Indonesia, Bandung; Alumni,
- [5]. Belinfante, A.D. en J.L. de Reede 1983. *Beginselen van Nederlands Staatsrecht*, Samson Uitgeverij Alphen aan den Rijn, Amsterdam,
- [6]. Black, Hanry C. 1991, *Black's Law Dictionary*, Abridged Sixth Edition, St.Paul, MINN, West Publishing Co.

- [7]. Brewer-Carias, Allan R, 1989, *Judicial Review in Comparative Law*, Cambridge University Press, Cambridge.
- [8]. Broers, Erik-Jan, en Bart van Klink, De rechter als rechtsvormer, Boom Juridische
- [9]. Brown, L.Nevelle J.F. Darner, Frech Administrative Law, 3d edn, Butterworths London, 1983
- [10]. Candler Ralph C. and Plano Jack C, *The Public Administration Dictionary*, Jhonn Wiley & Sons, New York Brisbane, Toronto-Singapore, 1982,
- [11]. Capelletti, Mauro, *Judicial Review in the Contemporary World*, New York, The Balbs-Merrill Company, Inc., 1971
- [12]. Cardozo, Benjamin N, The Nature of the Judicial Process, New Haven and London, Yale University Press, 1949.
- [13]. Conway, Charles, Jurisprudence, In a Nutshell With Test Questions, London, Sweet & Maxwell Ltd., 1971
- [14]. Couwenberg, S.W. Westers Staatsrecht als Emancipatie, Samson, Alphen aan den Rijn, 1977,
- [15]. Cramer, James A., ed. Courts and Judges, Sage Publication, Inc., Beverly Hills, California, 1981.
- [16]. Curzon, L.B, A Dictionary of Law, Second Edition, Macdonald & Evans Ltd., London, 1983.
- [17]. Dardji Darmodihardjo & Shidarta, Soal-Soal Pokok Filsafat Hukum, BPK Gunung Agung Mulia, Jakarta, 1975
- [18]. Darwin Muhadjir, *Dalam Demokrasi Indonesia Kontemporer*, Editor Riza Noer Arfani, PT. Raja Grafindo Persada, Jakarta, 1996
- [19]. David, Rene and John E.C. Brierley, *Major Legal System in the World Today, An Introduction to the Comparative Study of Law*, Third Edition, London, Stevens & Sons, 1985
- [20]. Dicey, A.V, An Introduction to the Study of the Law of the Constitution, 'Introduction', by E.C.S.Wade, London, 1973,
- [21]. Dietze, Gottfried, Two Concepts of the Rule of Law, Indianapolis, Liberty Fund Inc., 1973.
- [22]. Dijk, P. van., et al, Van Apeldoorn's Inleiding tot de Studie van het Nederlandse Recht, W.E.J. Tjeenk Willink B.V., Zwolle, 1985.
- [23]. La Ode Husen & Husni Thaamrin, Hukum Konstitusi, Ksepakatan (Agreement dan Kebiasaan (Custom) Sebagai Pilar Konsvensi Ketatanegaraan, CV.Social Poitic Genius, (SIGn) Makassar, 2017

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