

Functions of The Public Election Commissions In Operation of Choice of The Head of Regions Based on The 1945 Constitution

¹ Muh. Nur Iqbal N, Said Sampara

*¹ Student Master of Legal Studies Postgraduate Program of Muslim University of Indonesia
Professors At the Faculty of Law of the Muslim University of Indonesia
Corresponding Author: Muh. Nur Iqbal N*

Abstract: The purpose of this study is to analyze and explain the Laws Regulating Regulations About the Role of the Regional General Election Commission in the Implementation of Election of Regional Head and to Analyze and Explain the ideal Law Construction in regulating the role of General Election Commission of Regional Head in the Implementation of Election of Regional Head.

Keyword: Functions, The Public Election Commissions

Date of Submission: 21-04-2018

Date of acceptance: 08-05-2018

I. INRODUCTION

Democracy has been an option since the Indonesian people proclaimed independence. The fourth precepts of Pancasila, "People governed by the wisdom of wisdom in the deliberations / representatives" form the basis of recognition of the sovereignty embodied in the basic principles of democratic mechanism. People's sovereignty is manifested through various forms of community engagement, especially to determine who should run the government, including who oversees the government in democracy, the involvement of the community that is actualized in the implementation of elections.

The 1945 Constitution of the State of the Republic of Indonesia has provided the basis for the implementation of the State and the arrangement of democratic national life, as reflected in the recognition of the people's sovereignty exercised according to the Constitution, as defined in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, 1 Paragraph (3) of the 1945 Constitution of 1945 that "the State of Indonesia is a State of Law". The basic principles of the State The democratic law is embodied in the form of recognition and guarantee of essential human rights in the democratic process, the election mechanism mechanism of election representatives and public positions as the embodiment of the sovereignty of the people, as well as the arrangement of state institutions based on the principle of Checks and balances .

Implementation of the constitutional basic provisions based on the 1945 Constitution of the Republic of Indonesia is the responsibility of the components of the nation, both State and citizens. The success of the 1945 Constitution of the Republic of Indonesia is determined the system of implementing rules of conduct made, the spirit of the State organizers, and the awareness and participation of all citizens. After the amendment of the 1945 Constitution of 1945 until now, various rarities have been done is to considalize the rules and institutional adjustments to the provisions of UD NRI 1945, accompanied by efforts to improve the constitution of all components of the nation.

One of the conditions that must be fulfilled in democracy is the holding of general elections. It is important because, First; People's opinions or aspirations about various aspects of community life are dynamic, and evolve from time to time. In a certain period of time, it is possible for most people to change their opinions about a State policy. Second; In addition to people's opinions from time to time, the living conditions of society can also change, either because of the dynamics of the international world or domestic factors alone, both because of internal human factors and external factors of human. Third; Changes in the aspirations and opinions of the people can also be possible because of changes in the population and the mature people. They are primarily new voters, not necessarily have the same attitude with their own parents. Fourth; elections need to be held regularly for the purpose of ensuring the replacement of the leadership of the State, whether banned from executive or legislative power.

In order to ensure a categorical cycle of power, a regular election mechanism is needed, so that democracy can be guaranteed, and a truly devoted government to the interests of all people can truly work effectively and efficiently. The existence of such an orderly democratic system that, welfare and justice can be realized with the best.

The direct election of regional heads and deputy regional heads has become an integral part of democratic development in Indonesia. Consolidation of democracy at the local level is believed to be a crucial part in realizing a more solid and democratic national consolidation. The post-election of Election as part of the election regime, hereinafter known as *Pemilukada*, again reinforces its role and function as a central part of the democratization process in Indonesia.

At the local government level, elections are actualized into the election regime. At this time, there is a deliberation room for the community to determine the direction of governance in the region. Similarly, deliberation of citizen participation in determining leadership in the regions. Through *Pemilukada*, policies by elected regional heads are expected to be formulated based on the will of the community, including their implementation. The existence of public policies that benefit the community is the end of the improvement of democracy through the election of regional head

Of the 1945 Constitution stipulates the articles of election set forth in Article 22E paragraph (1) which is further stipulated in Article 2 of Law No.7 of 2017 concerning General Election of Members of the People's Legislative Council of the Regional Representative Council and the Regional People's Legislative Assembly, namely direct, general, free, confidential, honest and fair. Directly and by the people, is the basic principle of democracy. So in other words, if it has been confirmed directly elected by the people, then the process and regime into the category of elections. The principle of direct election for the post of president and vice president has been regulated by the 1945 Constitution Article 6A as well as in Law Number 23 Year 2003 on the Election of President and Vice President.

Election of Regional Head is affirmed in Article 18 of the 1945 Constitution that; Governors, Regents and Mayors respectively as heads of democratically elected provincial, district and municipal governments. The democratic definition of direct election by the people is stipulated in Law No. 8 of 2015 on Amendment to Law Number 1 Year 2014 On the election of Governors, Regents and Mayors into Law, Article 1 Paragraph (1) "The election of Governor and Deputy Governor , The Regent and Deputy Regent, and the Mayor and Deputy Mayor, hereinafter referred to as the Elections, shall be the implementation of the sovereignty of the people of the provinces and districts / municipalities to elect the Governor and the Deputy Governor, the Regent and Deputy Regent, and the Mayor and Deputy Mayor directly and democratically ".

Election Objectives as stipulated in the 1945 Constitution Article 22E Paragraph (2) it is determined that "Elections shall be to elect members of the People's Legislative Assembly, Regional Representative Council, President and Vice President and Regional People's Representative Council". And Article 22E Paragraph (5) stipulates that, "General elections shall be held by a national, permanent and independent election commission".

The General Election Commission hereinafter referred to as KPU shall be an institution established under the law to hold general, national and permanent general elections as stipulated in Article 22E Paragraph (5) of the 1945 Constitution of the Republic of Indonesia. The General Elections Commission (KPU) as the organizer of the General Election as stipulated in Law Number 15 Year 2011 on the Implementation of General Election, the KPU in conducting the General Election is committed and guided by the principle of being independent, honest, fair, orderly in conducting General Election, open, professional, efficient and effective. Considering the duties of KPU is to organize the General Election of Members of the House of Representatives (DPR), Members of the Regional Representative Council (DPD), Members of the Regional House of Representatives (DPRD), and the Presidential and Vice Presidential elections held directly by the people.

The General Elections Commission (KPU) also conducts the election of the Regional Head (*Pilkada*), namely to elect the Governor and Vice Governor, Regent and Deputy Regent and Mayor and Deputy Mayor directly, so that to carry out the task, the Provincial and Regency / City KPUs shall be established. Provincial and Regency / Municipal KPUs are authorized to organize the General Election of Regional Heads when the birth of UUNo.22 Year 2007 on the Implementation of General Election. The entry of elections into the election regime as stipulated in Law No.2 of 2007 on the Implementation of General Election as amended by Law No.15 of 2011 on the Implementation of General Election. So bring the logical consequences to the Constitutional Court in resolving disputes *Pemilukada*.

Direct and indirect election of regional head which subsequently gave birth to Law No.22 of 2014 on the election of Governor, Regent and Mayor governing elections with indirect mechanism / representation. That the birth of the Law was rejected and revoked Perpu No. 1 of 2014 on the Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor. Perpu Number 1 Year 2014 is stipulated as Law No.1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 Year 2015 felt there is still some inconsistency and leaving a number of obstacles if, so that is perfected by Law Number 8 Year 2015 about Amendment to Law Number 1 Year 2015 Concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 on the Election of Governors, Regents, and Mayors into Laws. Completion of Law No.1 of 2015 actually affirms that the elections are not election regimes as intended by Article 22E Paragraph (2) of the 1945 Constitution. Referring to the Decision of the Constitutional Court No.97 / PUU-XI / 2013, the

Court declared that the Constitutional Court has the authority to resolve disputes over election results of regional heads. This verdict indicates that the election of the regional head is not a general election regime as referred to in Article 22E of the 1945 Constitution of the Republic of Indonesia.

II. FORMULATION OF THE PROBLEM

Based on the background description of the problem, then as for the formulation of the problem in this study are as follows:

1. What is the function of the Regional General Election Commission in organizing the Election of Regional Head (Pilkada) in the Regional General Election Commission (KPUD) Prov. South Sulawesi?
2. What is the ideal legal construction in regulating the function of the Regional General Elections Commission (KPUD) in the Implementation of Election of Regional Head (Pilkada) in KPUD Prov. South Sulawesi?

III. THEORETICAL FRAMEWORK

1. Theory of the Rule of Law

The State of Indonesia is a State of law. Thus the affirmation of the 1945 Constitution on the State of Indonesia. At first the concept of the State of law was closely linked to the political tradition in the western countries, namely the freedom under the rule of law, although today the promotion of the rule of law of western nations is not only an increase in freedom. Almost the whole world has accepted the concept of the rule of law, in fact support for the rule of law is a worldwide measure of government legitimacy.

According to Julius Stahl, there are four elements that must be owned and characteristic of the State of law (*rechtsstaat*), namely the protection of human rights, power sharing, rule-based government, and state administrative court.

Meanwhile, another theoretician Albert Van Dicey, a famous British thinker, wrote a book entitled "Introduction to the Study of The Law of The Constitution", arguing that there are three main elements of the rule of law:

1. Supremacy of law, which has supreme authority in a State is the law (rule of law)
2. Equality before the law, equality before the law for all citizens, both as a person and his status as a State official
3. Constitution based on individual rights, the constitution is not a source of human rights and if human rights are laid down in the constitution, then it is merely an affirmation that human rights should be protected.

Later, The International Commission of Jurists posited three important features that characterize the State of law, that is, firstly, subject to the law; second, the government respects individual and third rights, impartial judiciary.

Based on the analysis of the development of Tamanaha law state concludes that the theory of the developing State State up to now can be squeezed into two major groups, namely the formal state of law and the substantive state of law, each of which consists of three distinct forms which indicate its development. According to Tamanaha, these three formal forms evolved from a more liquid form of thickening.

The formal conception of a state law is aimed at the way the law is declared (by the authorities), the clarity of the norm, and the temporal dimension of the enactment of the norm. Conception The law state is not related to whether the law is a good or bad law. While the substantive conception of the State of law moves further than that. By still recognizing the above formal attributes, substantive conception of the State of law wishes to enter further doctrine. Its basic rights or derivation form the basis of the concept of a substantive legal state.

Omar Seno Adji, specifically proposed the concept of a unique Indonesian legal State derived from the ideals of law and legal beliefs and practices in the Indonesian state. According to Seno Adji, the State of Indonesian law (which he calls the State of Pancasila Law) which has a Jakarta charter, which views the Supreme God as the prime causa.

Tahir Ashary, argued that one of the main characteristics in the State of Pancasila law is the guarantee of freedom of religion or freedom of religion. However, freedom in the Pancasila legal state is always in a positive connotation, meaning that there is no room for atheism or anti-religious propaganda on Indonesian soil. This is very different, for example the United States who understand the concept of freedom of religion in both positive and negative sense, as formulated by Sir Elfred Denning as follows: "*Freedom of religion mean that we are free to worship or not to worship to affirm the existence of god or deny it, to believe in Cristian religion or any other religion or in none, as we choose*".¹

¹ Muhammad Tahiir Azhary, *Negara Hukum Indonesia*, UI Press, Jakarta, 1995, dalam buku Nurul Qamar, *Negara Hukum atau Negara Undang-undang*, *Pustaka Refleksi Books, Makassar, 2010, cet-I, hal. 34-45.*

IV. DEMOCRATIC THEORY

There are various democratic terms. There are so-called constitutional democracies, parliamentary democracy, guided democracy, Pancasila democracy, people's democracy, religious democracy and so on, all of these concepts use the term democracy. The term democracy comes from the Greek word "demos" which means "people" and the word "kratos" or "cratein" meaning "government", so the word "democracy" means "government by the people". The word "government by the people" has the connotation of (1) a government "elected" by the people and (2) a government "by ordinary people" (not by nobility), even (3) a government by the small and poor by the poor or often termed "little wongs".² Although literally, the word democracy means government by the people, but operationally the meaning given to democracy is very diverse, even its development is very uncontrolled. Many people talk about democracy without knowing the true meaning of democracy.

According to the interpretation of R. Kranenburg in his book "Inleiding in de vergelijkende staatsrechtswetenschap", the word of democracy formed from the two Greek words above, the meaning is the way of governing by the people.³

Thus the idea of democracy as mentioned above certainly can not be separated from an idea or concept of the sovereignty of the people who rely on the existence of a State, because the essence of democracy itself is the extent to which can give freedom of involvement to the people to determine goals and ideals, of course can not be separated from the point of view and the conception of democracy adopted. As the theory of sovereignty emerged at the time of the French revolution against the absolute power of the king and tried to destroy it, took over the sovereignty in total, and proclaimed the sovereignty in full to the people, from which began to develop the theory of people's sovereignty.

2. Representative Democracy

Representative democracy (representative democracy) is a very large model of democracy today, and it can even be said that this model of guardianship democracy is today a stereotype of contemporary and universal democracy. With representative democracy also called indirect democracy, it is intended that State officials, in principle, elected by the people, exercise their powers and functions on behalf of the interests of the people it represents, whether in certain districts or in whole.

The definition of representation or representation varies greatly. Some of them are those which Rao has based on the opinion of Alfred de Grazia (1994) which defines representation as the relationship between two persons, representatives and the representative (constituent), in which the representative holds the authority to carry out several actions that have consent of its constituents. In line with that opinion, Hanna Penichel Pitkin (1957) as a representative process, in which the representative acts in order to react to the interests of the parties represented. The representative acts in such a way that between the representatives and parties represented there is no conflict and if it happens, it should be able to ease with explanation. Representation is the concept that a person or group has the ability or obligation to speak and act on behalf of a larger group.⁴

Looking at the political history and political development process, the concept of representative democracy is really the answer to the condition of population growth and development, both in quality and quantity, so it is impossible to keep applying direct mechanisms and democratic systems. On the other hand, the concept of representation is also an answer to the needs of modern countries that generally have a very large area. This fact makes direct democracy a difficult choice in the system of government, so that the perwakilian conception is inevitably a realistic choice. Judging from the complexity of the problem, the modern state has a very complex issue, because not every member of society is able to provide answers to the existing problems, it is necessary to select a group of people who are considered really able to answer the problems that exist.⁵

V. DISCUSSION

1. General Election and Election of Regional Head

The General Election is to elect a person ruler, officer or other by writing down the selected name on a piece of paper or by voting in the election. Meanwhile, according to Law No. 8 of 2012 on General Election of Members of the People's Legislative Assembly, Regional Representatives Council, and Regional House of Representatives. General Election is a means of implementing the sovereignty of the people directly, publicly, freely, secretly, honestly and fairly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia.

² Munir Fuady, *Konsep Negara Demokrasi*, PT. Refika Aditama, Jakarta, 2010, hal. 1.

³ Koencoro Poerbonopranoto, *Sistem Pemerintahan Demokrasi*, Eresco, Bandung, 1987, hal. 2.

⁴ Fitayah Khotijah dkk, *Makalah Ilmu Negara Teori Perwakilan Politik*, diunggah pada tanggal 20 Desember 2015.

⁵ Ibid

According to Harris G. Warren, the election is an opportunity for citizens to choose government officials and decide what they want the government to do. And in making that decision the citizens determine what exactly they want to have. Elections in elections are also referred to as constituents, in which election participants offer their promises and programs during the campaign period. Campaigns are held during the pre-determined time of the voting day. After the voting is done, the calculation process begins. The election win is determined by the rules of play or the holder determination system previously established and approved by the participants, and socialized to the voters. The electoral process is part of democracy. From the above understanding can be concluded, that the election is the process of selecting or determining the attitude made by a community to elect a ruler or a political official to lead a State which is also held by the State.

2. Election Rights

In principle every citizen is entitled to participate in the General Election. The right of citizens to participate in elections is called Right of Voting, which consists of active Voters (voting rights), Passive voting rights (right of choice). Every Indonesian citizen who on voting day is seven or more years old or already married has the right to vote. An Indonesian citizen who has the right to vote, may only use his right, if it has been registered as a voter. A person who has the right to vote, to be available as a voter, must meet the following requirements:

- 1) Not disturbed soul / memories
- 2) Not being deprived of its right to vote by a court decision having a permanent legal force, on the contrary an Indonesian citizen who has been registered in the Permanent Voter List (DPT), then no longer fulfills the above conditions, can not exercise his / her right to vote.

Problems and turmoil often occur in the community. This is due to inaccurate data of voters. There are citizens who have fulfilled the requirements as voters, apparently not listed in the Permanent Voter List (DPT), on the contrary the people who have died are still listed in the DPT. Actually this problem is more technical and administrative, but by those who feel disadvantaged, the issue is politicized so that it is not uncommon to cause turmoil and conflict. Based on the observation, the inaccuracy of voters / DPT is caused by several factors, among others:

- 1) Not yet well-documented population data, which is the authority and responsibility of the Government, in this case the Ministry of Home Affairs and its staff
- 2) Data updating / verification of voter data is not conducted by KPU and its staff well. The people, in this case the prospective voters, do not actively try to keep them listed in the Permanent Voter List (DPT).

3. Arrangement of Election Law in Indonesia

In the third premise of the Preamble to the 1945 Constitution, it is conceived that the State of the Republic of Indonesia is a sovereign State and based upon deliberative deliberations. Therefore, the State system established in the Constitution must be based on the sovereignty of the people and based on representative deliberations. The 1945 Constitution states that the sovereignty of the people is held by a body, called the People's Consultative Assembly (MPR), as the incarnation of all Indonesians (Vertretungsorgan des Willensdes Staatsvolkes). This Assembly is in charge of preparing the Constitution and establishing the broad lines of the State's objectives. The MPR also appoints the Head of State (President) and his deputy (Vice President). The People's Consultative Assembly is the highest authority in the State, while the president is in charge of running the State Policy in line with the outlines set by the MPR. Here, the role of the President is as the mandate of the MPR, meaning that the President must submit and be accountable to the MPR.

According to Article 2 Paragraph (1) of the 1945 Constitution of the Fourth Amendment of 2002, the People's Consultative Assembly (MPR) consists of members of the House of Representatives (DPR) and members of the Regional Representative Council (DPD) elected by general election. This is also stated in Article 19 Paragraph (1) of the 1945 Constitution of the Second Amendment of 2000 which states: "Members of the People's Legislative Assembly shall be elected by general election". And Article 22C of the 1945 Constitution of the 3rd Amendment result of 2001 which reads: "Members of the Regional Representative Council shall be elected from each Province through general elections". Article 6A of the 1945 Constitution, which is the result of the third Amendment of 2001, is explained regarding the election of the President and Vice President whose full reads: "The President and Vice President shall be elected in one spouse directly by the people. (2) A couple of candidates for President and Vice President shall be nominated by a Political Party or a coalition of political parties participating in the general election prior to the election. (3) A couple of candidates for President and Vice President who get a vote of more than fifty percent of the number of votes in the general election with at least twenty percent of the votes in each province spread over more than half of the provinces of Indonesia, constituted as President and Deputy President.

Of the 1945 Constitution constituting the Constitution of the Republic of Indonesia regulates the issue of general election in chapter VIIB concerning the election of Article 22E as a result of the Third Amendment of the 1945 Constitution of 2001. In full, the sound of Article 22E is:

"(1) Elections shall be conducted in a direct, public, free, secret, honest and fair manner every five years. (2) Elections shall be held to elect members of the People's Legislative Assembly, the Regional Representative Council, the President and the Vice President, and the Regional People's Legislative Assembly. (3) Election contestants to elect members of the People's Legislative Assembly and members of the Regional People's Legislative Assembly shall be political parties. (4) Election participants to elect members of the Council shall be held by a national, permanent and independent general election commission (6) Further provisions on elections shall be governed by law. "

In addition to the 1945 Constitution, the issue of elections is also described systematically in a Law drafted jointly by the Parliament and the President. The current Law on General Elections is Law Number 8 Year 2012 on General Election of Members of the People's Legislative Assembly, Regional Representatives Council, and Regional People's Representative Council (Dewan Perwakilan Rakyat). The related to the mechanism of organizing the election is regulated in Law Number 15 Year 2011.

In political studies, elections can be practiced as a political activity in which elections are both institutions as well as practical politics that enable the formation of a representative government. As stated above that within a democratic country, elections are one of the most vital elements, since one of the parameters of a democratic measure of a State is the way in which the elections are conducted by that State. Democracy is a form of government by the people.

In Law No. 8 of 2012 on the General Election of members of the People's Legislative Assembly, the Regional Representatives Council, and the Regional People's Legislative Assembly in Chapter I concerning General Provision of Article 1 Paragraph (1) to give an understanding of the election are: "General Election, hereinafter referred to as General Election, is a means of implementing the sovereignty of the people directly, publicly, freely, secretly, honestly and fairly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia".

Implementation of the government by the people is by choosing representatives of the people or national leaders through a mechanism called the general election. So the general election is one way of choosing representatives of the people.

As a form of implementation of democracy, the next general election serves as a vessel that filters out candidates for the people's representatives or state leaders who really have the capacity and capability to behave in the name of the people. Apart from being a container that filters out representatives of the people or national leaders, the elections are also linked to the principle of the State of Law (Rechtstaat), because through elections the people can elect their representatives who are entitled to create legal products and conduct supervision or implementation of the will of the people outlined by the people's representatives. With the election, people's human rights can be channeled, so too to be equal before the law and government.⁶

Elections have turned out to be a bridge in determining how government can be democratically established. People become the determinant in choosing leaders and their representatives who will then direct the nation's journey. Elections become like a transmission of belt, so that the power that comes from the people can be transformed into the power of the State which then incarnate in the form of government powers to govern and govern the people. In the political system, elections are meaningful as suggestions of a link between political infrastructure and political superstructure, enabling the creation of government from by and for the people.⁷

The word "democratically elected" may be interpreted democratically by the DPRD. However, the provision is further elaborated by the Law on Susduk in the sense of direct elections by the people. Therefore, today, the head of the central government and local government are directly elected by the people.

Some political positions filled with direct elections by the people are: President, Vice President, Member of DPR, DPD Member, Provincial Governor, Member of Regency / City DPRD, Village Head.

General election is also one of the most fundamental means of distributing citizens' human rights. Therefore, in the framework of the implementation of the human rights of the citizens is a requirement for the government to ensure the implementation of the election administration in accordance with predetermined governance schedule. In accordance with the principle of the sovereignty of the people in which the people are sovereign, then all aspects of the electoral process itself must also be returned to the people where the people are sovereign, then all aspects of the general election itself must also be returned to the people to determine it.

⁶ Mahfud MD, *Hukum Dan Pilar-Pilar Demokrasi*, Gama Media, Yogyakarta, 1999, hal. 221-222

⁷ Ronald Chilcote, *Teori Perbandingan Politik, Penelusuran Paradigma*, PT Raja Grafindo Persada, Jakarta, 2003, hal. 23.

According to Parulian Donald, there are 2 benefits as well as a goal or a direct goal to be achieved by the implementation of political institutions of elections, namely determining or fertilizing legitimate power (authority) and achieve the level of political representativeness (political representativeness).

1. The purpose of general election or general election can be formulated there are 4, namely:
2. To enable the transition of government leadership in an orderly and peaceful manner
3. To enable the replacement of an official who will represent the interests of the people in the representative body of the people
4. To implement the principle of popular sovereignty
5. To implement the principles of citizens' rights.

Elections are the principal institution of democratic representative government, because in a democratic country, governmental authority is obtained only by the consent of the governed. The main mechanism for implementing such approval to be the government's authority is through the implementation of free, fair and fair elections, in particular to elect the President / Regional Head. Even in countries that do not uphold democracy, elections are held to give legitimacy to power (authority).

3. General Election of Regional Head

General Election The head of the region becomes a national political consensus which is one of the important instruments of governance after the launching of regional autonomy in Indonesia. While Indonesia itself has conducted direct election since the enactment of the Law of the Republic of Indonesia Number 32 Year 2004 on Regional Government, as amended by the Law of the Republic of Indonesia Year 2015 About the second Amendment to Law Number 23 Year 2014 About Local Government.

When viewed from the perspective of decentralization, the direct election is a significant new breakthrough for the process of democratic consolidation at the local level. Direct elections open up a wider space of participation for the community in the democratic process to determine political leadership at the local level. This system also opens opportunities for people to better actualize their political rights without being reduced by the interests of the political elite, such as when a representative democratic system applies.

Based on Article 1 Paragraph (2) of the Regulation of the General Election Commission Number 69 Year 2009 concerning Technical Guidelines for the Election of Regional Head and Deputy Regional Head Elections which formulate the definition of General Election of Regional Head and Deputy Regional Head, namely:

- 1) General Election of Regional Head and Deputy Head of Region hereinafter referred to as Regional Head Election and Deputy Head of Region is General Election to elect Head of Region and Deputy Head of Region directly in Unitary State of Republic of Indonesia Year 1945
- 2) Before the enactment of Law of the Republic of Indonesia Number 23 Year 2014 regarding Regional Government, Head of Region and Deputy Head of Region elected by DPRD. However, since June 2005, Indonesia adopted direct election system.
- 3) Basically the area is a part that can not be separated with NKRI. This is related to the election of Regional Head and Deputy Regional Head who should be in sync with the election of President and Vice President, ie direct election.

VI. CONCLUSION

1. Implementation of direct regional head election is the result of the process of learning democracy in Indonesia which has lasted from the time of independence until today. in its application, there are still deficiencies contained in the direct election-related laws and regulations set forth in Law Number 32 Year 2014 which is amended by Law of the Republic of Indonesia Number 9 Year 2015 On the second amendment to Law Number 23 Year 2014 About local government.
2. The entry of direct election into election regime in line with pandangan one of the judges of the Constitutional Court. To quote Laica Marzuki's opinion in the decision of the Court Number 072-073 / PUU-II / 2004 which stated that the direct election was (equated) with the election, as follows: "From the constitutional point of view, the direct election is the general election \
3. Direct Regional Head Election is actually an alternative to answer any conflicts and poor implementation and results of local elections indirectly through DPRD under Law No. 22 of 1999 on Regional Government. Pilkada immediately became an urgent need to correct as soon as possible all the weaknesses in the pilkada indirectly implemented through the DPRD. Direct elections will be useful to uphold the sovereignty of the people who have been lost since the election through the DPRD. This creates a favorable democratic state in the governmental environment (governance) as well as in the societal environment because the people's sovereignty has been fully restored.

REFERENCES

- [1] Abu Daud Busroh, 2001, *Ilmu Negara*, Cetakan Ketiga, Bumi Aksara, Jakarta.
- [2] Abu Nashr Muhammad Al-Iman, 2011, *Membongkar Dosa-dosa Pemilu*, Prisma Media, Jakarta.
- [3] Arif Hidayat dan Airlangga Surya Negara, 2011, dalam makalah revisi yang sudah disampaikan pada acara semiloka *Pendidikan Pancasila dan Konstitusi*, diselenggarakan oleh Mahkamah Konstitusi di Jakarta.
- [4] Brian Z. Tamanaha, 2011, *On The Rule Of Law, History, Politics, Teori*, Edisi Keempat, Cambridge University Press, 2006, dalam Hamdan Zoelva, Pemakzulan Presiden di Indonesia, Sinar Grafika, Jakarta.
- [5] Dahlan Thaib. H, 1999, *Kedaulatan Rakyat, Negara Hukum, dan Konstitusi*, Liberty, Yogyakarta, cet-I.
- [6] Deliar Noer, 1983, *Pengantar ke Pemikiran Politik*, CV Rajawali, Jakarta.
- [7] Firmansyah Arifin dkk, 2005, *Lembaga Negara dan Sengketa Kewenangan Antarlembaga Negara*, KRHN, Jakarta.
- [8] Hans Kelsen, 1995, *Teori Hukum Murni Dasar-dasar Ilmu Normatif Sebagai Ilmu Hukum Empirik-Deskriptif* (terj.) oleh Somardi, Rimdi Press, Jakarta.
- [9] Jimly Asshiddiqie, 2005, *Sengketa Kewenangan Antarlembaga Negara*, Konstitusi Press, Jakarta.
- [10] _____, 2009, *Menuju Negara Hukum Yang Demokratis*, Jakarta, PT. Bhuana Ilmu Populer.
- [11] _____, 2006, *Konstitusi dan Konstitusionalisme Indonesia*, Sekretariat Jendral Mahkamah Konstitusi RI, Jakarta.
- [12] _____, 2008, *Pokok-pokok Hukum Tata Negara Indonesia Pasca Reformasi*, PT. Bhuana Ilmu Populer, Jakarta cet-II.
- [13] Koencoro Poerbopranoto, 1987, *Sistem Pemerintahan Demokrasi*, Eresco, Bandung.
- [14] La Ode Husen dan Husni Thamrin, , 2017, *Hukum Konstitusi Kesepakatan (Agreement dan Kebiasaan (Custom) Sebagai Pilar Koncensi Ketatanegaraan*, CV.Social Politic Genius (SIGN), Makassar.
- [15] Mahfud MD, 1999, *Hukum Dan Pilar-pilar Demokrasi*, Gama Media, Yogyakarta.
- [16] \Marzuki, 2007, *Pengaruh Sistem Pemilihan Umum Terhadap Keterwakilan politik Masyarakat Pada DPRD-DPRD di Provinsi Sumatra Utara, Studi Konstitusional Peran DPRD Pada Era Reformasi Pasca Pemilu 1999*, Disertasi, Program Pasca Sarjana USU: Medan.
- [17] Mahsudi, 1993, *Pengertian-pengertian Mendasar Tentang Hukum Pemilihan Umum Di Indonesia Menurut UUD 1945*, Mandar Maju, Bandung.

Muh. Nur Iqbal N. Functions of The Public Election Commissions In Operation of Choice of The Head of Regions Based on The 1945 Constitution .” IOSR Journal Of Humanities And Social Science (IOSR-JHSS). vol. 23 no. 05, 2018, pp. 01-08.