

PROCEEDING

The 2016 International Conference and Call for Papers (ICCP) UNS

“The Administration of Justice”



19-20 November 2016
The Alana Hotel Solo



Universitas Sebelas Maret

PROCEEDING
The 2016 International Conference and Call
for Papers (ICCP) UNS

Theme
"The Administration of Justice"

organized by
Faculty of Law, Universitas Sebelas Maret

Surakarta, 19-20 November 2016

PREFACE

The 2016 International Conference and Call for Papers (ICCP) UNS, held in Surakarta from November 19-20 November, 2016, with an overarching conference theme of “The Administration of Justice”. This theme was developed due to highlighted issue in ensuring that public bodies and those who exercise public functions make the right decisions, and challenges on providing justice for all.

This proceedings from the conference provides multiple meanings of the term sustainability that divided into seven panels, namely Human Rights and Criminal Justice System; The Administration of Islamice Law; Maladministration and its Remedies; Environmental Crime and Administration of Justice; Bussiness Law Perspective; Customary Law; and Miscellaneous. There were eight plenary sessions covering the different areas of the conference : Prof. Dr. Ida Madiha Abdul Ghani Azmi (International Islamic University Malaysia); Dr. A (Albertjan) Tollenaar (the University of Groningen); Prof. Huala Adolf, S.,H., LL.M., Ph.D., FCARB (Universitas Padjajaran); Pan Mohamad Faiz, PhD (The Constitutional Court of Indonesia); Prof. Dr. Supanto, S.H., M.Hum (Universitas Sebelas Maret).

These public talks, respectively, were very accesible to a general audience. The conference participants came from various background such as researcher, lecturer, practitioner, and college students as well. The first day before conference program was started by a special gala dinner to honor all of distinguished guests, invitation, and participants.

The selected paper that were presented on the conference program formed the heart of the conference and provide ample opportunity for discussion. Of the total number of presented papers, all papers that split into seven panels sub theme are included in this proceedings. We would like to thanks to the committee who were facing the challenge during the conference to achieve the aims of the event. All in all, the ICCP UNS was successful and we expect this proceeding could be useful for the entire scholar.

Dr. Hari Purwadi, S.H., M.Hum

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Theme

"The Administration of Justice"

Reviewer

Dr. Hari Purwadi, S.H., M.Hum.

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Theme

***“Law and Sustainable Development amongst
Developed and Developing Countries”***

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PROBLEMS OF REGIONAL HEAD ELECTION SIMULTANEOUSLY AGAINST NATIONAL SECURITY

Ariyanto

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ABSTRACT

Election simultaneously interpret as the national elections and local elections, a local election is more appropriately called the General Elections of Regional Head, Implementation of Regional Head Election Simultaneously itself to accommodate the wishes of people who want the elections (Elections general) an efficient and cost-effective in terms of funding its implementation. Also of course in its implementation required the participation of society to participate in the success of the democratic process with maintaining security during the General Election of regional heads take place, security is becoming an integral part of the electoral process, because local elections are particularly vulnerable to social conflicts, especially in regions implementing Regional Head Election, needed awareness for all parties to support the creation of Electoral peacefully without any violence that could eventually create a national security which embodies the local elections were democratic and avoid social divisions, political, ethnic, religious and economic in the area.

Keywords: Regional Head Election Simultaneously, National Security

A. Introduction

Prior to 2005, the regional head and deputy head of the region selected by the Regional Representatives Council (DPRD). Since the enactment of Law Number 32 Year 2004 on Regional Government, heads of local elected directly by the people through Election of Regional Head and Deputy Regional Head or abbreviated Regional Head General Election. Model Regional Head Election is also inspired by the idea of the separation of powers in general, there are two main political institutions, namely the executive and legislative obtain full opiate of the electorate, in addition to their institutions yudikatif.¹

Regional Head Election first held in June 2005. Since the enactment of Law No. 22 Year 2007 regarding the general Election Organizer, Regional Head Election Election inclusion in the regime, so it is officially named the general election of Regional Head and Deputy Head of Region or abbreviated Regional Head General Election. The first local elections held on the basis of this law is the General Election of Regional Head of Jakarta 2007.² One of the forms and mechanisms of local democracy by Jenedri M Gaffar is the implementation of general elections of regional heads directly.³

Each Region acquire the same rights in implementing the General Election the area, in 2017 areas that are holding simultaneous regional Head Election consists of 7 provinces, 76

1 Wendy Melfa, *Pemilihan Umum kada (demokrasi dan Otonomi Daerah)*, BE. Press, Lampung, 2013, hlm.13

2 www.wikipedia.com, 5 Oktober 2016. 13.00

3 Jendri M Ghaffar, *Politik Hukum Pemilihan Umum*, Konpress, Jakarta, 2012, hlm.

districts and 18 cities. Based on data from the Commission there are 360 pairs of candidates in the General Election of Regional Head 101, with 24 Pairs of candidates for the provincial level and 282 pairs of candidates in the election fight regent or mayor.⁴ The seven provinces including Aceh, Bangka Belitung, Jakarta, Banten, Gorontalo, West Sulawesi, and Papua Barat Regional Head Election course provides an opportunity for citizens can determine regional leader by his own conscience.⁵

From democracy itself, make people as the main determinant of policy and charging public officials. In terms of a more participatory democracy can be understood as the concept of rule of, by and for the people. When you look at the Article 18 paragraph (4) UUD 1945 Constitution in line with the way of doing democratic local elections. However, the implementation of direct Regional Head Election corresponding wishes of the people is not without problems. A number of problems arose among them is susceptible horizontal conflict in the community, organizers General Election which is not neutral, the parties can not accept defeat so that 90 percent of the General Election of Regional Head Constitutional Court.⁶

Election simultaneous regional head is very needed role in the Community escort and success of the local elections simultaneously, but the reality is happening in momentum regional head election lot of people who had been scattered, because of the interests of individuals and groups respectively, ironically again there are also some youth who are apathetic toward the situation, the absence of consensus among community. Social media gives a large influence the development of Indonesian society, but when assessing the language used in social media, however, lies not in accordance with the ethics of communication and cultural values and character of the Indonesian nation. Mutual blasphemous, teasing, yelling at each other and mutually.⁷

Wahid Foundation survey found the amount of data that is considered quite worrying. 59.9 percent of the 1,520 respondents had hated group. The group hated their religious background includes a non-Muslim, Chinese groups, communists and others. Of the 59.9 percent, 92.2 percent disagree if the group members that they hate to be an Indonesian government official. A total of 82 percent are not even willing members of the group who hated it to be their neighbors. ⁸ Thus, According to Author The security forces and intelligence, need to supervise and approaching those who are vulnerable from the start and detect if there is an attempt to use the momentum Regional Head Election to fish in troubled waters as far as possible be prevented.

Surveys Wahid Foundation above could say provides real impression, In the General Election of Regional Head of Jakarta, occurred Persitiwa Candidate rejection couples who want to campaign, has been noted that there were 4 incidents of denial of action, related to the alleged blasphemy case involving Tjahaja Basuki Purnama, couples Djarot. Whereas Article 187 Paragraph 4 of Law No. 10 of 2016 on General Election of Regional Head. In

4 Kompas, Kampanye di Mulai, patuhi Peraturan Terkait Alat Peraga, Sabtu 29 Oktober 2016

5 Liputan 6. Com, 101 yang menyelenggarakan Pemilihan Umum Kepala Daerah serentak 2017, Kamis 10 Oktober 2016

6 Putusan-putusan Mahkamah Konstitusi telah banyak melakukan terobosan-terobosan hukum, bahkan putusan Mahkamah Konstitusi atas kasus Pemilihan Umum kada di Jawa Timur dipandang sebagai putusan yang kontroversial ketika itu, karena Mahkamah Konstitusi tidak hanya menyelesaikan sengketa hasil yang berupa hitungan angka-angka yang dipermasalahkan tetapi juga mempermasalahkan prosesnya yang tidak jujur, adil dan transparan, Lihat, Ni'matul Huda. *Dinamika Ketatanegaraan Indonesia dalam Putusan Mahkamah Konstitusi*. Yogyakarta: UII Press, 2010, hlm. 216

7 Kompas, Presiden Ingatkan Etika Berkomunikasi, 10 November 2016

8 Kompas, Teologi Politik, Jelang Pemilihan Umum Kepala Daerah, Sabtu. 29^oOktober 2016

the article it was arranged that the person who intentionally disrupts hinders and thwart the campaign can be threatened legal pidana.⁹

Vice President Yusuf Kalla encourage Regional Head Election to do with healthy competition. Jagan raises issues that could be dangerous. If there are issues Provocative delivered through social media, it should first ditabayungkan or clarified, because it is not necessarily true. In line with that of the Adherent religion calling for contestants simultaneous local elections in 2017, a successful team does not use related issues, tribal religions and races in the campaign, Politicization of Religion dikhawatirkan will memecah split the unity of the nation. National unity is more important than power struggles five annual.¹⁰

In this respect popular sovereignty may run optimally only if the community has a strong tendency toward political culture of the participants, as well as other necessities such as legal awareness and seyogiyanya behave to always be able to measure precisely things need balance. These include tangible harmony as harmony between the interests of the individual with society, between the spiritual and material aspects of life, between the central and local interests.¹¹

In preparing for participation in the General Election of Regional Head of course both local and central government must first set up a facility to take care of E-ID card as a condition becomes permanent voters. According to the information until now the number who do not have E-KTP in the tens of thousands per district.¹² Condition potentially result in the violation of the right to vote (right to vote) citizens is a constitutional right guaranteed by the 1945 Constitution, on the other hand the potential conflict from the voter list. In June 2005 marred by many problems, violence involving the supporters of candidate, the core problem is that many citizens who have the right to vote was not on the list voter.¹³

B. Discussion

1. The concept of Regional Head Election Unison

Election is the main means of realizing democracy in a country. Konstitualisme Election is the delivery of voice of the people to establish representative institutions and government as state officials. Voice of the people is manifested in the form of voting rights, namely the right to elect representatives of the various candidates exist. As a right, the right to vote must be met and in accordance with the constitutional mandate. It is the responsibility of the country in which the implementation is done by the Commission as an institution Election organizers. Hence, the Election Law states that voters list by the Commission (Article 27, Paragraph 2 of Law 42/2008).¹⁴ According to Dahlan Thaib basic principle of a democratic state life is that every citizen has the right to participate actively in the process of political.¹⁵

Local elections Unison executing what is contained in Article 201 Paragraph (1) of Government Regulation in Lieu of Law No. 1 of 2014 concerning the election of Governor, Regent, and Mayor. The article states, voting in unison in Governor, Regent, and Mayor whose term expires in 2015 held on the day and the same month in 2015.

9 Kompas, Cegah Hak Pilih Hilang, 10 November 2016

10 Kompas, Pemuka Agama Minta Jangan Gunakan Isu Sara, Jumat 28 Oktober 2016

11 Miriam Budiarmo, Dasar-Dasar Ilmu Politik PT. Gramedia, Jakarta, 1983, hlm. 9

12 Kompas, Daftar Pemilih Masih Bermasalah, Jumat 28 Oktober 2016

13 Winardi, Puskasi fh universitas widyagama malang, III(2), hlm. 74

14 Jendri M Ghaffar, *Op. Cit.*, hlm. 5

15 Dahlan Thaib, Implementasi Sistem Ketatanegaraan Menurut UUD 1945, Liberty, Yogyakarta, 1993, hlm. 94

With reference to section 201 the new procedure in Indonesia is a democratic process that is conceptually called "local elections.

Through elections the residents in an area can be freely independent support person to be Head of the Region, in accordance with the aspirations of diverse, and it should be with rationality respectively. According to George Homans Pasca Social Reality can view through Social Behavior as exchange activities and interests held by each individu.¹⁶ In that regard every actor who becomes the candidate is required to be made a political commitment, as another explanation of the importance of 'social contract, to fight for the aspirations of the people which is the central issue is usually not far from the issue of the people's welfare and the justice social.¹⁷

2. Public Participation For Constitutional Rights In Election General

Public participation is defined as an evolving concept in the modern political system, in this case, Robert B Gibson stated: ¹⁸The demand for public participation was once the exclusive preserve of radical challenging centralized and arbitrary power. Many radical Critics continue to believe that the resolution of the present problems requires the active participation of all individuals in making the decisions roomates Affect Reviews their lives.

Line with the view of Robert B Gibson, the Mas Ahmad Santoso added that the decision making of public participation useful for the decision right -Right reflect the needs, interests and desires of the public. Added Robert B Gibson participatory democracy not only seeks a democratic government (democratic Governments), but also the democratic society (democratic societies) .¹⁹ While democracy According to Beetham aims to give people the control room of the public affairs on the basis of political equality and solidarity between citizens requires a set of general principles on the rights and the ability for everyone to participate, authorization, representation and be responsible transparent.²⁰

Principles above requires a set of instruments, including: ²¹

- a. democratic elections, representation, government responsive and responsible;
- b. of the Constitution or laws that guarantee equality, the rule of law and justice; and
- c. community participation in all forms, whether media, the arts, as well as civil society organizations freely and democratically oriented. Prerequisites effectiveness of a democratic system is the independence or self-reliance and correspondence or suitability

Between the official definition of the demos (ie how "citizen Indonesia" is defined as a legal-constitutional and administrative) ie by how people identify themselves in

16 Muhamad Riska Aditama, *Perilaku Memilih Masyarakat pada Pemilu Kepala Daerah dan Wakil Kepala Daerah Kabupaten Kendal 2010*, Jurusan Ilmu Pemerintahan Fakultas Ilmu Sosial dan Politik Universitas Diponegoro, Semarang 2013, hlm 12, di Kutip dalam www.jurnalportalgaruda.com

17 Mukthar Sarman, *Pilkada Serentak Quo Vadis Kedaulatan Rakyat*, PT LKIS printing Cemerlang, Sewon Bantul, Yogyakarta, 2015, hlm. 13

18 R. B. Gibson, , *The Value Of Participation*, dalam P.S Elder (edit), *Environmental Management and Public Participation*, Canadian Environmental Law Research Foundation Of the Canadian Environmental Law Association, , 1981, Ottawa hlm. 7, di Kutip Oleh Saldi Isra , *Pergeseran Fungsi Legislasi* , PT. Raja Grafindo Persada, Jakarta, 2010, hlm. 282

19 Ibid, hlm. 283-284

20 Beetham, *Democracy and Human Rights*, Polity Press, Oxford, 1999, hlm. 12

21 Betham, Bracking, Kearton dan Weir, *Internasional IDEA handbook and Democracy Assessment*, Kluwer Law Internasional, New York, 2002, hlm. 37-39

public affairs in the sense kratos. This is what ultimately refers to the responsiveness of representative Ultimately democratic ideals can be realized with true when every citizen to participate in government in a constitutional democracy, Civic education effective is a necessity because of the ability to participate in a democratic society, to think critically, and act consciously in a pluralistic world, requires empathy that allows us to hear and therefore accommodate the other hand, calls for a sufficient capability. In the context of human beings as individual citizens, the election means the submission process while political rights. Such right is the sovereign right to participate in implementing the country.²² elections are considered to be a measure of democracy because the people can participate determine its attitude towards the government and the country. Elections are an important thing in the life of the state. Election is a manifestation democracy, through elections people vote.

3. Establish the National Security Socialin Preventing Conflict

Security placed here as an abstract value, focused on maintaining independency and sovereignty. Dimension is used it must Militeristic dimension given the threat that comes is in the form of interruption due to the war, insurgency, communal conflict, riots, terrorism, and natural disasters. So it is precisely when we define "security" in this sense as part of the duties, functions and role of the military and police as an instrument of the state in the field of defense in order to realize the country's goal of protecting the entire nation and the country of Indonesia.

Indeed national security can be achieved with the integration of all lines which become elements of the Indonesian state in this case the government and the people. To realize the national defense system is certainly true state of Defense is the most important element for the survival of the state. Moreover, in Indonesia as the country with the geographical structure island nation, and natural resources and huge human, of state defense is a must to run and must be set accurately.

Defense's own country is all efforts to defend national sovereignty, territorial integrity Unitary Republic of Indonesia, and the safety of the entire nation from threats and harassment against the integrity of the nation and the state. Every nation has its own way of course to defend its existence, and in this way, among others affected by the conditions covering every gatra of life / national life and the threats that they face. Because of the conditions and the threat this may not be the same for the two countries, let alone for a few tens of people in the world then there may be two systems are exactly sama.²³of Defence

Doctrine of National Defence is the basic principles that provide direction for the management of defense resources to achieve goals national security. The basic principles consist of six cargo defense doctrine, namely:²⁴

- a. of the nation's perspective on the war;
- b. the component countries engaged in war;
- c. in control of the war;
- d. accountability mechanisms
- e. a war strategy; and
- f. the termination of the war. six cargo is then arranged on three

22 Miriam Budiarjo, *Hak Asasi Manusia Dalam Dimensi Globa*, Jurnal Ilmu Politik, No. 10, Jakarta, 1990), hlm. 3

23 Haryomataram, *Hukum Humaniter*, Rajawali Press, Jakarta, 1984 hlm, 163

24 Andi Widjajanto, *Evolusi Doktrin Pertahanan Indonesia*, Jurna Pro patria, 2005, hlm. 1

Levels: political, military, and professional. In support of Regional Head Election simultaneously, the Government launched an integrated security team. In terms of prevention of social conflicts, the coordination of the implementation of the handling of social conflicts in terms of conflict prevention, cessation of conflicts and post-conflict recovery through integrated teams and integrated action plan the handling of social conflicts at central, provincial, district / city. According to Titi Anggraini underlines the magnitude of the potential conflicts that arise when the incumbent candidate back in forth in the Regional Head General Election, both in duet same package or when the regional head and deputy 'broke up their partnership'. "The potential for greater conflict-prone in the face appearing 'dynasty politics' in that area,". He shared with the Regional Head Election simultaneously in 2015, there are 144 incumbent ahead in the Regional Head General Election, with 48 of them back wins and 96 petahana lost.²⁵

Integrated team coordination related to the implementation of Regional Head General Election and the stability of peace and order involving military, police, Jamintel, BIN, Kemenkopolhukam, Kesbangpol, KPU, Bawaslu and DKPP. While the team is carrying out integrated local Regional Head General Election in 2015 was Secretary of Provincial / District / City; Kesbangpol Province / Regency / City; Provincial KPU / Regency / City; Bawaslu Regency / City; The commander and the Chief of Police; Kajati and Kajari; Cabinda; and Head of High Court / State.

The government wants to encourage the public scrutiny inherent and deliberate and can be integrated with one another between the institutions of the host country supervision of general elections. The Ministry of Home Affairs and the Commissioner General Election Commission (KPU) Centre convene an intensive coordination in order to face the implementation of the Regional Head Election simultaneously in 2015 in accordance with Law No. 8 of 2015 on the Amendment of Act No. 1 of 2015 Concerning Determination of Government Regulation in Lieu of Law No. 1 of 2014 On the election of governors, regents, and mayors are set March 18, 2015.

The potential for conflicts in local elections (regional head election) simultaneously believed some very large parties. In fact, predictable Indonesian Institute of Sciences (LIPI), three times more potent than the National Election. Regional Head Election simultaneously more prone to conflict than the presidential election and the legislative elections so that the estimated level of vulnerability is higher. To that end, seyogiyanya Police has already mapped and minimize potential vulnerability. The potential for conflict is created because of economic factors, political, social, cultural as well will continue to affect the volatility of society.

Observing strategies and processes Election kada which is getting close to the time, it must be carried out supervision in particular by a state agency that has the function and role in the supervision of the General Election the , Moreover, general elections will be held simultaneously in 269 areas.²⁶ Once a society or a nation agreed to choose a democratic system, when it should be realized that embody a democratic political order was in addition to complicated, it takes patience political education for the people. Therefore, political parties are not only instruments of the hunting power, but also institutions which have the task of education and political socialization to the community.

The potential for conflict was not due to unpreparedness of society, but conflicts can arise with the presence of mobilizing the masses, political maneuvers incumbent (incumbent)

25 <http://ksp.go.id/menangkal-potensi-konflik-Pemilihan-Umum-Kepala-Daerah-serentak->

26 [www.dirjenkesbangpol.kemdagri, 2015](http://www.dirjenkesbangpol.kemdagri.go.id/)

in legal political opponents, money politics (money politics), the use of state facilities, mobilization of bureaucracy, a covert campaign and clashes between the supporters of the candidate pairs (paslon) because not utuhnya application of the system of local democracy, mainly due to the weakness of the rule.

If the potential for conflict direct regional Head election is not eliminated, it is not likely to take place slowdown in the democratic process in the area. A political scientist Juan Linz and Alfred Stepan said, a country said to be democratic if it fulfills the prerequisites among others have the freedom to people to formulate their political preferences through lines of trusts, information and communication; provide space and healthy competition through peaceful means; and do not forbid anyone to compete for political office. In this case clear, peaceful political competition become an important prerequisite for democracy.²⁷

Election peacefully without violence is the hope for all people of Indonesia, the participation of public awareness in a peaceful General Election create no other, to support the creation of national security in the country. People participate in efforts to maintain national security, even Indonesia adheres defense system involving components of society.

C. Conclusion

The implementation of direct Regional Head Election which simultaneously will be prone to conflict, potential for conflict that can arise with the presence of mobilizing the masses, political maneuvers incumbent (incumbent) in legal political opponents, money politics (money politics), the use of state facilities, mobilization bureaucracy, a covert campaign and clashes between the supporters of the candidate pairs (paslon), "could even be friction between supporters developed into anarchy, such matter could threaten national security if it is not anticipated, therefore the necessary awareness for all parties to support the creation of Election peaceful without violence, in the end can then be created that embodies the national security of democratic local elections and avoid social divisions, political, ethnic, religious and economic life in the region

²⁷ www.hukumonline.com, 23 Maret 2016

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