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Examining Direct Democracy in Indonesia

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Introduction

Indonesia, as a democratic country, has laws that regulate the working implementation of democracy. One of these laws stipulates that Indonesia acknowledges the practice of direct democracy¹. Indonesia has implemented direct democracy in the past in the form of referendums. Notable examples are the referendum to amend the 1945 Constitution and the referendum held by East Timor province to vote on their affiliation to Indonesia (Pereira, C.B., 2006). During the referendum, the people of East Timor were asked to determine their citizenship status (Soares, D.B., 2003). East Timor voters were asked whether they would like to remain affiliated with Indonesia or become independent. The East Timor area was historically annexed by Indonesia during Soeharto's presidency back in the New Order period. The referendum was a consequence of UN resolutions calling for the right to self-determination (Pushkina, D, & Maier, P, 2012). The 1997 Indonesian economic crisis and political reforms in May 1998 facilitated the Indonesian government's decision to hold a referendum in East Timor under UN supervision.

In this regard, this paper will analyze the implementation of direct democracy in the Indonesian context. It will examine the mechanism of direct democracy in Indonesia, the historical context behind the call for the East Timor referendum, and its legal basis. We find that Indonesia practices two forms of direct democracy: referendums and general elections. We focus particularly on the referendum to amend the 1945 Constitution and referendum held in East Timor, later called Timor-Leste. In general elections, Indonesia directly elects its executives of the president and vice president, the governor and vice governor, the mayor and vice mayor, the regent and vice regent, and the head of the village and also the representatives in national and local level.

Theoretical Overview

Direct democracy is the implementation of democracy without proxy (Matsusaka, John, 2005). The most prominent form of direct democracy today in Indonesia is referendum and election in which citizens allowed to express and choose their preferences (Liddle, R.W., 2000). Regarding to referendum types, the electorates determine the political will by choosing to answer simple questions offered by the referendum committee whereby people choose their executive candidates directly.

¹ Law No. 5/1985 on Referendum

A popular referendum empowers citizens to make a petition that calls a popular vote over existing legislation. A special committee for hosting referendum formulates the timeframe for a valid petition and the required signatures. They may require signatures from diverse communities to protect minority interests. This form of direct democracy effectively grants the public the option to veto laws adopted by the elected legislature

According to Pew Research' survey, at least 38 countries show a preference for committing to representative democracy (Wike, Simmons, Stokes, and Fetterolf, 2017). These long-list of number showing that counties support democratic representation as well as direct democracy by considering some advantages of the well-functioning democracy. The advantages of the direct democracy practices ranging from the feasibility of mass gatherings which require voters to gather in one place, enabling specific issues to be discussed and debated directly, ensuring the inclusiveness by engaging society to influence the decision making-process, allowing the majority support to be considered and being a winner, facilitating community meetings to assign or appoint government officials who hold administrative posts, allowing voters to submit the legal drafts as well as to propose amendments the constitution based on community support.

However, aside with the advantages, there are also the disadvantages of direct democratic practices that endanger the democratic transition in the future. First, elections incur costs for printing, election supervisor salaries, the General Election Commission (Komisi Pemilihan Umum/KPU) salaries, and other reason that make local legislator members powerless. Second, money politics is something that will always be there when someone hungry for power engages in corruption or seeks a return on investment. Third, frequent horizontal social conflicts occur due to political elites who deny their supporters, triggering attacks on one other. Fourth, it is difficult to engage in direct democracy in a large population because doing so consumes a lot of time and energy. Moreover, the direct democracy has tendency to be expand the authoritarianism by empowers populist to rise and make used of popular votes such as using referendums to be an effective mechanism to get into the power (Collin, 2019).

The Referendum to Amend the 1945 Constitution

1) The Legal Perspective

Presidential Decree No. 5 issued in 1985 laid out the requirements for amending the 1945 Constitution, stating that such amendment would only be allowed through a referendum. In this decree, a referendum is defined as an activity to directly ask whether the people agree with the wishes of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat/MPR) to amend the 1945 Constitution. The decree states that the people's opinion must be conveyed in the form of a statement by the People's Opinion Giver, where The People's Opinion Giver is a citizen of the Republic of Indonesia who meets the requirements set out in the law.

The consideration for the amendment of the 1945 Constitution is in the following: The MPR resolves to uphold the 1945 Constitution, does not intend and will not make changes to it, as stated in the MPR Resolution of the Republic of Indonesia Number. I/MPR/1983 on the MPR Rules of Procedure, and MPR Resolution of the Republic of Indonesia Number. IV/MPR/1983 on the referendum. However, the MPR will implement Article 3 of the MPR Resolution of the Republic of Indonesia Number. IV/MPR/1983 on the referendum, and therefore it is necessary to

establish a law in governing the referendum. Referendums are held through direct, public, free, and secret public opinion polls. Public opinion is polled using the people's opinion letter.

The decree further stated that the public would be declared to agree with the wishes of the MPR to amend the 1945 Constitution if the results of the referendum as referred to in Article 17 show that at least 90% of the total number of registered Public Opinion Givers have exercised their right to give public opinion, and at least 90% of the People's Opinion Givers who exercise their rights express agreement with the will of the MPR to amend the 1945 Constitution.

2) Mechanism of the Referendum for the Amendment of the 1945 Constitution

In 1985, Indonesia acknowledge the law Number 5, Year 1985 for amending the 1945 Constitution through referendum. The mechanism of the referendum should comply with the following mechanism. The referendum shall be held within a maximum of 1 (one) year from the commencement of the registration of the People's Opinion Giver until the submission of the results of the referendum to the President as stipulated in the Law number 5 year 1985. According to article 7 of law number 5 year 1985 stated that the people's opinion poll is conducted in 1 (one) day and simultaneously done in all territories of the Republic of Indonesia. The implementation of the referendum is led by the President. To implement the law, the President shall appoint a committee to conduct a referendum, which shall be chaired by the Minister of Home Affairs.

Further, to carry out the referendum, the Referendum Implementation Committee is formed at the Provincial, Regency/ Municipality, Subdistrict, Kelurahan/Village level, and at the Representative of the Republic of Indonesia abroad. For this purpose, the Governor, Regent/Mayor, Sub-District Head, Village Head, and Head of Representative of the Republic of Indonesia abroad, due to their respective positions, shall be the Chairman of the Referendum Executive Committee.

The Referendum Implementation Committee consists of elements of the Government. To help the implementation of the referendum, a Referendum Supervisory Committee shall be established. The composition, duties, functions, working procedures, and other matters concerning the Referendum Implementation Committee and the Referendum Supervisory Committee shall be further regulated by a Government Regulation.

To exercise the right People's Opinion Giver must be registered in the People's Opinion Giver Register. To be registered in the Register of Public Opinion Givers, the following conditions must be met:

- a. not a former member of a prohibited organization of the Indonesian Communist Party,
- b. not crazy person
- c. person who still have the right to vote or the right to vote is not being cancelled by court decision.

A People's Opinion Giver who, after being registered in the List of People's Opinion Givers, if they are no longer meets the requirements, they cannot exercise the right to give the people's opinion. Citizens of the Republic of Indonesia who are former members of prohibited organizations of the Communist Party of Indonesia, including mass organizations of the Indonesian Communist Party are not registered in the People's Opinion List.

Immediately after the people's opinion poll is over, a people's opinion poll is held at the people's

polling place. The People's Opinion Giver may be present to follow the implementation of counting the people's opinion. The results of the calculation of public opinion shall be submitted to the the referendum committee. Therefore, the Referendum Implementation Committee collect all the result from each level committee of their respective work areas.

3) The Referendum of East Timor

3-1) Background of the Referendum

Timor-Leste is located in the eastern part of the island of Timor with an area of 15,007 km², and was previously a colony of Portugal known as Portuguese Timor. Due to the struggle of the Revolutionary Front for an Independent Timor-Leste (Fretilin), the region declared independence from Portugal on November 28, 1975.

Under the leadership of Soeharto, Indonesia carried out a military invasion that ended in the annexation or forcible incorporation of Timor-Leste into Indonesian territory. Soeharto gained this momentum by taking advantage of the situation in Timor-Leste, which was divided between left and right-wing groups. East Timor was declared the newest province of the Unitary State of the Republic of Indonesia.

Indonesia attacked Timor-Leste with a military operation known as Operation Seroja, the largest military operation ever carried out by the Indonesian army. Thousands of troops were mobilized to invade Dili City. They captured and destroyed Fretilin. Around 15,000 Indonesian troops were deployed to secure the second largest city, Baucau. On July 27, 1976, Indonesia officially declared East Timor its 27th province (Handoyo, S, 2014)

Changes in global and domestic politics in Indonesia have implicated the Indonesian policy on Timor-Leste. When Habibie became president, the autonomy of East Timor became a crucial issue. Demands were made by countries beyond Europe and ASEAN for Indonesia to carry out political reforms and particularly to help Timor-Leste determine its own destiny. In this regard, Portugal as a former clone of Timor-Leste, demand the Indonesian government jointly determining the future of Timor-Leste. As a result, Indonesia and Portugal concluded an Agreement on May 5, 1999 in New York under the UN corridor (Braithwaite, J, 2012). The Agreement laid out a procedure for hosting public opinions in a confidential, direct and universal manner.

3-2) The Mechanism of the Referendum of Timor Leste

The significance of the change in East Timor began in January 1999 when President Habibie announced a “second option” for East Timor to choose between regional autonomy or independence. Habibie asked the then Secretary-General of the United Nations, Kofi Anan, to bridge the disagreement between Indonesia and Portugal over East Timor. An agreement was reached to use the popular opinion poll in consultation with the East Timorese community (Agussalim, 2019). At the suggestion of the United Nations, President Habibie held a referendum on August 30, 1999, under the supervision of the United Nations Mission for East Timor (UNAMET) attended by the people of East Timor. The police and Indonesian Military (Tentara Nasional Indonesia/TNI accompanied UNAMET, which was the UN mission formed based on the UN Security Council Resolution No. 1246 dated May 5, 1999, to carry out the task of polling in Timor-Leste. The climax of the referendum was on August 30, 1999 (Puspita, 2008). Simultaneous polls were held throughout Timor-Leste and outside Timor-Leste. In the referendum, the people of East Timor answered two questions (Anderson, B, 1993).

- a. Do you accept special autonomy for East Timor within the Unitary State of the Republic of Indonesia?
- b. Do you reject the proposed special autonomy for East Timor, which will lead to the separation of East Timor from Indonesia?

The results were announced in Dili on September 4, 1999. A total of 451,792 East Timorese attended the event where the results were announced. Out of a total of 438,968 valid votes, 344,580 (78.5%) people voted for independence, while 94,388 (21.5%) people chose to remain with Indonesia. The participation rate in the referendum was very high, with 451,792 people representing 98.6% of all registered voters. The results of the referendum led to the official separation of East Timor from Indonesian control, and the territory was temporarily placed under the authority of the United Nations.

As many as 78.5% of the population of East Timor rejected the special autonomy offered by Indonesia, choosing independence instead. After the referendum results were announced, riots broke out in East Timor. Armed militia groups supported by the Indonesian Military (Tentara Nasional Indonesia/TNI) went on a rampage and burned the city of Dili and other places (Crouch, H., 2003). Records show that around 1,400 people died and 300,000 people fled to Atambua. This also tarnished Indonesia's credibility in the eyes of the international community since the Republic of Indonesia had guaranteed security during the referendum. On October 19, 1999, the results of the East Timor referendum were approved by the MPR, which confirmed that East Timor was no longer Indonesian territory.

Historical records reflect that Timor-Leste separated itself from the Unitary State of the Republic of Indonesia on August 30, 1999 through the implementation of an independence referendum. On May 20, 2002, Timor-Leste was officially declared an independent and sovereign country. The leader of the liberation struggle, Xanana Gusmao, was elected the first president of East Timor.

4) Direct Democracy in the form of General Elections

4-1) The Background of Political Change

In Indonesia, direct democracy is also practiced in the form of direct elections. During the New Order political reign, the governor and vice governor, regent and vice-regent, and mayor and vice mayor were elected by the people's representatives at the local level (Dhakidae, D., 2003). Law No. 22 of 1999 proscribed that regional heads were elected by legislative members at the local level. During this time, candidates were mostly assigned by the central government. Candidates were elected by the people's representative. However, many people believe that the elected candidates win because of the economic transaction behind the election mechanism by the people's representative. Therefore, it was generally assumed that candidates were politically "supported" by the central government. Through Law Number. 32 of 2004, this mechanism to elect regional heads was changed from legislative member proxy elections to direct elections by the people.

The phrase "democratically elected" in Article 18 paragraph (4) of the 1945 Constitution is interpreted to mean that regional head elections must be conducted directly by the people. This paper will discuss the provisions in the mechanism for selecting regional heads as well as the dynamics of regional head elections (including in special regions) in Indonesia. From a normative juridical overview, it is stipulated in the law that local election can be done in the form of direct elections by the people or elections by the Regional People's Representative Council. Both normative views

erived from the assumption that the selection of the regional head as long as it is considered as democratically elected, it is considered as comply with the 1945 Constitution.

There are several arguments as to why local elections should be conducted directly by the people (Kosasih, A., 2018). First, direct local elections are needed to break the oligarchic chain of party leadership in determining the pair of regional heads and deputy heads elected by the legislative members at the local level. In addition, the election by a handful of legislative members at the local level also tends to be oligarchic because legislative members can potentially fight for the interests of the political elite. Second, direct elections are expected to improve the quality of sovereignty and people's participation because they allow the public to directly determine and choose the candidate pair who will best fight for their interests. Third, direct elections accommodate the bottom-up leadership selection process while minimizing the portion of leadership that is appointed by the central government. Fourth, direct local elections are expected to minimize money politics, which generally occur transactionally when elections are conducted by the legislative members at the local level. Because they are assumed to be relatively free from money politics, regional leaders who are the product of direct regional elections are expected to be able to institute good governance and enforce clean regional governments. Fifth, direct local elections are expected to improve the quality of regional executive political legitimacy, encourage political stabilization, and improve the effectiveness of local government.

4-2) The Mechanism of Direct Election for the Executive

Following Article 18 paragraph (4) of the 1945 Constitution, regional heads are democratically elected. Before 2004, the regional heads are elected by legislative members. However, it is changed to direct election. Law Number. 32 of 2004 concerning regional government stipulates that the head and vice head of a region are directly elected by the people. Their candidacies should be proposed by political parties or coalitions of political parties.

Conclusion

Various literature studies revealed the advantage of direct democracy. However, the democratic transition in Indonesia shown the pathway to consolidation by emerging the direct election not only for president and vice president, but also the local governors and regency in the local level. The strengthening of direct democratic practices thus deemed the democratic institution to ensuring the well-functioning of civil society organizations and other interest groups to engage in decision making-policy. In the end, these direct democratic practices have successfully brought Indonesia to be resilience from democratic setback whereas at the same time have to fight back for reducing the popular votes raising populism to expand their power. ■

References

- Agussalim, Agussalim. "Rekonsiliasi Indonesia–Timor Leste terhadap Kes Pelanggaran Hak Asasi Manusia Pasca Referendum." PhD diss., Universiti Utara Malaysia, 2019.
- Anderson, Benedict. "Imagining'East Timor'." *Arena Magazine (Fitzroy, Vic)* 4 (1993): 23-27.
- Braithwaite, John, Hilary Charlesworth, and Adérito Soares. *Networked governance of freedom and tyranny: peace in Timor-Leste*. ANU Press, 2012.
- Crouch, Harold. "The TNI and East Timor Policy." *Out of the Ashes: Destruction and Reconstruction of East Timor* (2003): 141-167.
- Dhakidae, Daniel. *Cendekiawan dan kekuasaan dalam negara Orde Baru*. Gramedia Pustaka Utama, 2003.
- Halperin, Morton, Joe Siegle, and Michael Weinstein. *The democracy advantage: How democracies promote prosperity and peace*. Routledge, 2009.
- Handoyo, Sri. "A Brief History of the Boundary Mapping Between Indonesia and Timor-Leste." In *History of Cartography*, pp. 165-180. Springer, Berlin, Heidelberg, 2014.
- Kosasih, Ade. "Menakar Pemilihan Umum Kepala Daerah Secara Demokratis." *Al Ijarah: Jurnal Pemerintahan dan Politik Islam* 2, no. 1 (2018).
- Lake, Silverius CJM, and Frederikus Fios. "To Become Indonesian: Experience, Perception, and Hope of East Timor Refugees after Referendum (1999-2009)." (2021).
- Liddle, R. William. "Indonesia in 1999: Democracy restored." *Asian Survey* 40, no. 1 (2000): 32-42.
- Matsusaka, John G. "Direct democracy works." *Journal of Economic perspectives* 19, no. 2 (2005): 185-206.
- Munhanif, Ali. "Democratization and The Politics of Conflict Resolution in Indonesia: Institutional Analysis of East Timor Referendum in 1999." In *ICSPS 2019: Proceedings of the 5th International Conference on Social and Political Sciences, ICSPS 2019, 12th November 2019, Jakarta, Indonesia*, p. 23. European Alliance for Innovation, 2020.
- Nugroho, Rahmat Muhajir, and Anom Wahyu Asmorojati. "Simultaneous Local Election in Indonesia: Is It Really More Effective and Efficient?." *Jurnal Media Hukum* 26, no. 2 (2019): 213-222.
- Pereira, Celestino Boavida. "Kesepakatan tentang referendum di Timor Timur." PhD diss., Universitas Gadjah Mada, 2006.
- Collin, Katherine. "Populist and authoritarian referendums: The role of direct democracy in democratic deconsolidation." *Brookings policy brief, Democracy and Disorder* (2019).
- Pushkina, Darya, and Philip Maier. "United Nations Peacekeeping in Timor-Leste." *Civil Wars* 14, no. 3 (2012): 324-343.

- Puspita, Nina Yudhi. "Upaya United Nations Transitional Administration In East Timor (Untaet) dalam Menjaga Keamanan Perbatasan Indonesia-Timor Leste (2000-2002)." PhD diss., Universitas Airlangga, 2008.
- Soares, Dionisio Babo. "Political developments leading to the referendum." *Out of the Ashes* (2003): 53.
- Tahir, Amirullah, Syamsul Bachri, Achmad Ruslan, and Faisal Abdullah. "The Local Election and Local Politic in Emboding the Democracy." *JL Pol'y & Globalization* 44 (2015): 138.
- Zurbuchen, Mary Sabina, ed. *Beginning to remember: The past in the Indonesian present*. NUS Press, 2005.

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