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**LEGAL IMPACT OF THE DIRECT ELECTION FOR REGIONAL  
LEADER IN JAMBI PROVINCE**

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***Abstract***

Indonesia adhere sovereignty of the people. The direct election for regional leaders constitutes the embody of democratic principle in Indonesia. The regional leaders have to realize the goals of national development in Indonesian. This research uses empirical socio-legal research approach, which analyses the impact of direct election on regional leader in Jambi Province. The researcher used theory of democracy and structural functionalism. Theory of democracy is used to analyse whether or not the direct election reflected the theory of democracy correctly. The theory of structural functionalism is used to examine and analyse the technical implementation of regional leader election. The theory can be explained in several theories of function, dysfunction, latent function and manifest function. This research describes the social engineering function of Regional Election Law directly in case of shaping the attitude and behaviour of democratic society. The control function that should be the guardian and the solution for a social control mechanism against the election violation which is also powerless. The phenomenon above provides a logical consequence that the function of the manifest is getting weaker because it is only the right of every citizen to participate in determining a leader to be elected. Meanwhile political education builds a democratic attitude that fails to achieve its goals. The lateness functions to increase violation dominanty. Finally, this is apparent in the implementation of elections which result in very high political costs, the superimposition of democratic principles and the chaos of government.

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**Keywords:** Direct election, legal impact.



## 1. Introduction

Article 1 paragraph (2) of the Indonesian Constitution states that sovereignty is in the hands of the people, meaning that everything concerns with the affairs of the government state. For instance, the government holds direct general election to elect a leader, and determines the state's policy that should always involve the people. The real embody of people's sovereignty is the general election. The general elections in Indonesia include the general election for parliament members, the general election for a president, and general election for the regional leaders.

The election for local government heads in Indonesia undergoes changes of systems from time to time. Indeed, since 1957 the direct election for local government heads which involves the people has been introduced in Article 23 of Law Number 1 Year 1957. But the mandate of the law has never been implemented. Furthermore, the election for local government heads is regulated in Presidential Decree Number 9 Year 1959, Law Number 8 Year 1965, Law Number 4 Year 1975, and Law Number 22 Year 1999 which regulated the election for local government heads that is conducted indirectly (representative). Democratization in Indonesia has prompted the change of the local government heads election system from indirect election to direct election. This is reflected in Law Number 32 Year 2004 which has undergone several changes. Now the government applies Law Number 10 Year 2016. For further discussion of direct election for local government heads in this research, it used direct election term.

The election for local government heads in Indonesia is regulated by Article 18 Paragraph (4) of the 1945 Constitution. Here, the Governors, Regents, and Mayors respectively as heads of government in provinces, regencies, and cities are elected democratically. The mandate of the 1945 Constitution by Article 56 of Law Number 32 Year 2004 is implemented in form of general direct elections which involve the people. Democratic electoral (elections) indicators according to the IDEA (Institute for Democracy and Electoral Assistance) are the drafting of a legal framework, electoral system selection, electoral area assessment, the right to be elected and voted, voter registration and voter lists, access to ballot papers for political parties and candidates, democratic election campaigns, access to media and freedom of expression, financing and expenditure, voting, vote counting and vote recapitulation, the role of party and candidate representatives, election monitoring, law compliance, electoral law enforcement, and electoral management institutions (Winardi, 2015)

The Direct Electoral Philosophy is seen as an effort to restore the "basic rights" of the people in selecting leaders in their respective regions that has to be carried out democratically. Changing the way of electing from "election through representation to direct election" has led to various implications both positive and negative. Direct election policy is intended to ensure the right of citizens to participate in determining who will lead their respective regions, and direct election will ensure the legality and legitimacy aspect. Thus the direct election system is expected to produce leaders who work for the interests of the people who have the capability and competence to encourage the region to have competitiveness with other regions. Direct election for local government heads has been implemented in Indonesia for 17 years including Jambi Province. But the direct election for local government heads practice is seems to be in no progress and tend to move away from the democratic character, ideal leaders who are expected by people are never materialize and even tend to be a disappointment.

## **2. Problem Statement**

Judging from the aspect of constitutional law, the general election is related to the principle of the State of law (Prasetyoningsih, 2014). The State of Law guarantees the existence of legal order in society by providing protection to the people, thus law and power have reciprocal relationship (Atmadja, 2014). Direct election for local government heads should be seen as law enforcement, thus direct election Coordinators, governments, political parties, and society should be subjected to direct election for local government heads law.

The law has two functions namely social engineering functions and social control functions (Ali, 2014). Judging from the social engineering function, the Law on direct election for local government heads becomes a means to form a democratic society in choosing a leader (head of region), with direct, general, free, secrecy, honest and fair indicators. Whereas from the social control function, the Law on direct election for local government heads must be able to guard and realize direct elections in accordance with its objectives, with accountability mechanisms in the form of administrative and criminal sanctions.

In reality in the field illustrates that the implementation of direct election for local government heads in Jambi Province still creates some problems, such as the number of law violations. In this connection, the focus of this research is to examine and analyze the various legal impacts that occurred in the direct election for local government heads in Jambi Province. Donald Black's opinion was quoted by Soleman B Taneko which explain that the legal impact is a comparison between legal reality and the legal ideal, then Soerjono Soekanto interpreted the legal impact as a change and impact of an activity (Taneko, 1993) which in the context of this research is concerning direct election for local government heads.

## **3. Research Questions**

The review toward the legal impact on election for local government heads should be initiated from the effectiveness (of law) of the election for local government heads itself, since the legal impact is a logical consequence from effective or not implementation of the regulation (direct election for local government heads law). Therefore, the research questions in this study are:

1. How is the implementation of direct election for local government heads in Jambi Province?  
What are the legal impacts of direct election for local government heads in Jambi Province?

## **4. Purpose of the Study**

The study of legal impact of direct election for local government heads in Jambi Province is intended to examine and understand thoroughly on how the implementation of the law (direct election for local government heads law) and how it impacts on the realization of regional autonomy objectives. Whether from this direct election for local government heads there has been found a democratically elected leader, which then side with the people, since the election of the selected leader is due to the people's choice. Such micro-research is also expected in other regions to describe the implementation of direct election for local government heads that increasingly disappointing many parties. With such research results, it is expected that the government will evaluate and adopt a policy to make the direct election for local government heads more effective and efficient and can be realized in accordance with their objectives.

## 5. Research Methods

The research on the legal impact of direct election for local government heads in Jambi Province need a method in which the purpose of research can be achieved It is also given that the method is a scientific way to obtain information and data that can be held scientifically. The research on legal impact of election for local government heads uses empirical legal research with socio-legal approach. The socio-legal approach is a study that represents a view toward the context rather than towards the text (Shidarta, 2016). Such view will be able to describe various phenomena related to the implementation and legal impact of direct election for local government heads.

Information/data taken from informants or institutions related to the problem of direct impact of local election, such as, KPU (General Election Commission) office, Bawaslu (General Election Supervisory Board), Governor's office, etc. In order to study and analyze the information and data of field research results, several relevant theories/ teachings are used, namely structural functionalism theory which will analyze whether the regulation of election for local government heads as an instruction and guidance really work and implemented in the election for local government heads.

The theory of structural functionalism sees the social reality as a system relationship of society which is a unity consisting of interdependent parts, so that the change of one part will cause change in another part (Wilkinson, 1987). The manifest function of the law is a function that is realized as desired by the legislator. While the latent function is an impact that is often not taken into account before by the legislator (Abdurrahman, 2009).

This research will have implications to the purpose of the election regulation, whether the lawmakers' intentions can be realized in accordance with their legal politics (manifest function), or rather some distortions occurred and leads to practices that never intended to be occurred by lawmakers, (Latent function). The distortion phenomenon in the implementation of direct election for local government heads will have legal impact.

## 6. Findings

### 6.1. The Implementation of Direct Election for Local Government Heads

#### 6.1.1. Participants of direct election for local government heads

Direct election for local government heads toward governor, regent/ mayor in Jambi Province start since 2005. The direct election for local government heads was followed by several pairs of candidates for local heads as follows:

**Table 01.** Number of candidates for election of regional head

No	The Total of Candidate Pairs	Regions and Year	Total
1	2	Sarolangun (2017), Bungo (2015), Tanjabtim (2015), Jambi Province (2015), Tanjabbar (2010)	5
2	3	Tanjabtim (2010), Tanjabbar (2010), Jambi Province (2010), and Bungo (2015)	4
3	4	Jambi Province (2010), Muaro Jambi (2017), Jambi City (2013), Sarolangun (2013), Merangin (2013), Sarolangun (2012), Jambi City (2008).	7
4	5	Kerinci (2013)	1
5	6	Kerinci (2008), Muaro Jambi (2012)	2

Source: Documents of Jambi Province Election Commission

In general the ideal number of candidate pairs in a competition is 2 pairs, but in direct election for local government heads in Jambi Province the participants with only 2 pairs candidates occur in 5 regions while the rest followed by 3 to 6 pairs of candidates for the local government head. The more the number of participants in direct election for local government heads then the possibility of two rounds to obtain a definitive local government head becomes greater as well. It is proven in Tebo and Kerinci regencies in which they done two direct election for local government heads to determine the candidate pairs of the elected local government head.

### 6.1.2. Direct Election for Local Government Heads Coordinators

To carry out these activities required many human resources (executor). Article 1 Point 5 of Law Number 11 Year 2015 stipulates that the Election Coordinators is an institution which organizes General Elections which consist of the General Election Commission and the Election Supervisory Board as a whole function of the implementation of the General Elections. For example, direct election for local government heads in Jambi Province in 2015 was implemented by 28,368 personnel, consisting of 19,289 elements of the Election Commission (Nasuhaidi, 2017), and 9,079 from the Election Supervisory Body (Suwarsono, 2017).

**Table 02.** Direct Election for Local Government Heads Coordinators in Jambi Province Year 2015.

Coordinators	Area	Members	Total
Province Election Commission	1	5	5
Regency/City Election Commission	10	5	55
The sub-district committee	138	3	414
The ballot committee	1,562	3	4686
Commission of Voting Committee	7,067	7	14,134
Total			19,289

Source: Processed from various sources at Jambi Province Election Commission.

**Table 03.** Supervisor of Jambi Province Coordinator of the General Election Year 2015

Supervisor	Area	Members	Total
Province Election Supervisory Agency	1	3	3
Regency/City Election Supervisory Committee	10	3	33
Kecamatan Election Supervisory Committee	138	3	414
Field Supervisory Committee	1,562	1	1,562
Supervisory of voting place	7,067	1	7,067
Total			9,079

Source: Jambi Province Election Supervisory Agency

The greater the number of direct election for local government heads organizers will affect the costs of organizing and potential violations that may be perpetrated by non-independent organizers, in the direct election for local government heads simultaneously Kerinci Regency Election Supervisory Committee, Tebo Regency Election Commission, and some direct election for local government heads organizers under it have been examined and prosecuted by Electoral Organizing Council

### 6.1.3. Violation in Direct Election for Local Government Heads

As the direct election for local government heads before, direct election for local government heads in 2015 also contained a variety of violations that are relatively numerous, as in the table below:

**Table 04.** Violation in Direct Election for Local Government Heads in Jambi Province Year 2015

No.	Type of violation	Total
1	Administrative	63
2	Criminal	129
3	Ethic Code	11
4	Dispute	0
	Total	203

Source: Jambi Province Election Supervisory Agency

If analysed from the perspective of the function of law, then the direct election for local government heads Law which should be a guideline as well as a guard to realize the purpose of direct election in a democratic manner cannot be realized properly. Democratic behaviour according to Josep Scumpetes is that every voter must have the ability to make his choice without pressure from others. Every voter must have independence in making choices. The reality in the field that money politics is more important than the vision, mission and program of the candidate pairs which influencing voter choice.

For the common people the pressure in determining the choice comes through money politics, with money approximately Rp. 150,000, - Rp. 200,000, - is very meaningful for the lives of ordinary citizens. If in one family there are 4 voters then they will get money of Rp. 600,000, - Rp. 800,000, - which on the other hand Provincial minimum wage in Jambi Province at that time (2015) amounted to Rp.1,710,000, - per month. As for the government apparatus and their family the pressure in determining the choice is influenced by the bureaucracy that will affect the career/position for the relevant government apparatus.

Meanwhile the control function of the direct election for local government heads is very ineffective, from 129 reports of crimes (money politics) which none can be proven, this is due to determine that an act categorized as a crime then it must fulfil two elements of evidences. This is an obstacle for Jambi Province Election Supervisory Agency to follow up reports of residents/teams of other candidate pairs. According to Jambi Province Election Supervisory Agency some people that have been reported both the giver and taker all deny that there has been money politics while they have a mutualism symbiosis relationship (Suwarsono, 2017). In the context of direct election for local government heads in Jambi Province it can be said that the control function especially toward money politics practices becomes dysfunctional. Dysfunction is interpreted as a not working function.

Seeing the description exposed above, it can be interpreted that in the case of direct election for local government heads in Jambi Province there has been a dysfunction of the Direct Electoral Law. It is seen that good and ideal value in direct election for local government heads Law cannot be realized in the field. Even in the practice of direct election for local government heads it emerged new behaviour that is to win the competition the candidate pairs and success team often ignore the honesty, and ignore regulation. The direct election for local government heads Law as a guideline as well as a guard so that

the implementation of local government head elections can be run democratically, honest and fair should always be fought to be realized in the society

## **6.2. Legal Impact of Direct Election for Local Government Heads**

The legal impacts of direct election for local government heads can be understood by looking at the effectiveness of direct elections itself, while the significant legal impacts in Jambi province are as follows:

### **6.2.1. The direct election for local government heads need high cost**

Decree of the Minister of Justice and Human Rights number M.HH-01.HN.03.03 dated 7th January 2016,

Implementation of direct election for local government heads in Jambi Province 2015 cost Rp. 169,209,042,670, - The fee includes:

- a) Grants to the Jambi Province General Election Commission for one billion rupiah (Rp 101,000,000,000) (Nasuhaidi, 2017).
- b) Grants to the Election Supervisory Board of Jambi Province for thirty billion five hundred million rupiah (Rp 30,500,000,000) (Suwarsono, 2017).
- c) Grant to the Jambi Regional Police for twenty five billion rupiah (Rp 25,000,000,000).
- d) Campaign costs from 2 pairs of candidates for twelve billion nine hundred nine million fourty two thousand six hundred and seventy rupiah (Rp 12,709,042,670), consisting of candidate pair (Hasan Basri Agus - Edy Purwanto) amounting to four billion six hundred ninety four million forty-two thousand six hundred seventy rupiahs (Rp 4,694,042,670,.) And the nominee pair number 2 (Zumi Zola Nurdin - Fachrori Umar) amounting to eight billion fifteen million rupiahs (Rp.8,015,000,000,.) (Nasuhaidi, 2017).
- e) In addition to the above costs there are still expenditures from each candidate which is relatively large, ie funds for the party bearer and socialization fund before they are set as candidate pairs.

The above costs do not include the budget for direct election disputes. This has always been the concern of the successful team, due to the fact that direct election in Jambi is more than 50% of the result of the direct election is sued to the Court (Constitutional Court).

The high cost benchmark of direct election is comparable to:

- a) If the election for local government heads is indirect (representatives) as implemented before 2005, the required cost is much less (efficient).
- b) When compared to the direct expenditure (development) of Jambi provincial budget in 2015 it is amounted to 1831 billion (for one fiscal year).
- c) The poverty rate of Jambi Province in the Official Gazette of Jambi Province No. 5/01/15/Th.IX, January 2, 2015, state that the poor people in Jambi Province amounted to 281,750 people (8.39 percent). The poverty line limit at that time was Rp. 329.181, - /capita/month.

If deeply observed the direct election for local government heads budgets become very large if viewed from the perspective of reducing the poor people in Jambi province. Especially when compared with the implementation of direct election for local government heads that has many violations and

further away from the democratic nuances. This condition is based on the opinion that this great cost is not proportional to the expectation of more prosperity of the people in the region (Prihatin, 2014).

### **6.2.2. The efforts to resolve the obstacles that face by Notary in giving free legal service toward unaffordable people in Jambi City**

Joseph Schumpeter defines democracy as a political method, in which citizens are given the opportunity to elect one of the political leaders who compete for votes. In subsequent elections, citizens can replace representatives/ politicians whom they have elected previously. The ability to choose between political leaders during the election is what referred to as democracy (Sorensen, 2003).

Seymour M. Lipset, as quoted by Georg Sorensen asserted that the richer the nation, the greater the country's chances of holding a democracy. Through the wealth every individual has the opportunity to improve the quality of education and better economic ability. In such position it is expected that every person/voter will have independence in determining his choice, not easily pressure, suppressed, let alone paid to choose a candidate who is not his choice of heart

The direct election for local government heads in a liberal political era places political parties in dominant positions leaving only wealthy people with a greater chance of winning. On the other hand, it is important to remember that one of the reasons for the formation of direct Election For Local Government Heads Law as an interpretation of democratic elections is:

- i) as response to the demands of citizens because the president is directly elected,
- ii) as a mean of learning democracy for the people (civic education),
- iii) as a mean of strengthening regional autonomy,
- iv) as a mean of national leadership cadre (Naziyah, 2015).

However, the fact that the direct election for local government heads purpose is heading toward the opposite direction, the people are not guided to be independent and objective in choosing the leader but rather taught to choose, which is influenced by the giving money (money politics), especially when connected with the function of the national leadership cadre. This is very pathetic, why? Because until December 2014 there were 343 local government heads who were in trouble with the law (Asril, 2015) and 4 of them from Jambi and were convicted of corruption, meanwhile corruption numbers in Jambi which done by bureaucratic officials who were subordinate of local government head in the last 5 years as many as 197 cases.

Given that the general election is to ensure the principle of freedom, representation, accountability and justice, and the implementation of democratic elections ultimately rests on how far the rules, processes and election results can serve the necessity of a compulsion of freedom, representation, accountability and justice (Respationo, 2013).

### **6.2.3. Chaotic Bureaucracy**

Indonesia has determined that the process and formulation of its government policy is carried out through a political process, and implemented by the bureaucracy. In this regard, the management of the bureaucracy is not sterile from the nuances of politic. Bureaucracy whose basic principle is a tool used to



carry out the service function to society, but in fact is more appear as a tool of authority, which used to maintain power itself (Sukmarningsih, 2015). Bureaucracy as a system of operational which service is carried out by personnel who are placed and authorized to run the bureaucracy. Therefore, the persons or apparatus placed to fill the position must be the right person on the right position. The indicator can be seen in Article 5 of Government Regulation Number 100 Year 2000, that one of the conditions is to have competence in the required job.

The provincial governor of Jambi in 2015 election results has appointed and inaugurated 807 new officials, echelon positions in the secretariat of the governor office and the Regional Organizing Organization as many as 934 positions.

The above description illustrates that the change of regional heads also has implications for the change of executing officials at the technical level, even from the 934 positions they have been replaced and inaugurated as many as 807 new officials. Thus, the replacement and inauguration of the officials in one period reached 86.40%. The appointment of these officers in a relatively short period of time certainly has the potential of placing personnel who are not in accordance with their competence.

This bureaucratic instability is compounded by a bad political leader. This happens because usually they declare themselves going forward with a certain party (not their current partner), while their working years are still long enough. Reality like this would interfere with the comfort in cooperation and complement from each other in carrying out the development of society. The situation in such a way leads officials and bureaucratic staff to be confused, because they have to be loyal to whom? To the local government head? To the deputy of local government head? Though both are still as local government head and deputy of local government head of the region, but there has been a quiet competition, even tend to be open. This is often seen in various binaries, banners in socializing government programs with one face background (local government head or deputy of local government head). Such a thing may mislead the public, as if the program is a private work, whereas what is socialized is a government program funded by Local Budget, therefore the background of binary or banner ideally should have no picture of the face of the local government head/representative, or if it is necessary both should be in the media. When leaders show quiet or open competition, it will certainly be followed by its loyalist officials, even if the competition is tougher on the next election. Such a bureaucratic situation further illustrates that bureaucracy tends to be a tool of authority rather than as a servant of society.

## **7. Conclusion**

Viewed from the perspective of the function of law, the implementation of direct election for local government heads procedurally has fulfilled and realizes the manifest function, but substantially the implementation of direct elections has not reached the ideal target, but instead gave birth to practices of latent functionality that was never imagined before and not anticipated by lawmakers.

The latent function as referred to in the first conclusion in this study appears in the legal impact of the direct election for local government heads in the form of enormous costs, the degradation of the values and principle of democracy as well as occurring the chaotic bureaucracy

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