

The Impeachment of Regional Head on Direct Democracy Era in Indonesia

Abdul Aziz Hakim

Department of Law Muhammadiyah University of North Maluku, KH. Ahmad Dahlan Street No. 100 Ternate City, Indonesia

Abstract: *Design impeachment formulation of regional heads in Law Number 32 Year 2004 has been revised to Act No. 12 of 2008, especially in Article 30 and 31, the real oddity. This is because the regulatory system is too dominated by the central power, in this case the president. The system actually distort de-centralism system application, which is part of the design of the constitutional system in Indonesia. Centralized system impeachment regional heads in this setting is not just collide with the nature of the system de-centralism, but also inconsistent with the principles of the formation of legislation. This is because the formulation of the regulation in the impeachment system mandated by the Local Government Act does not reflect the balance, harmony, and harmony, between the interests of individuals and communities with the interests of the nation. Two of these problems become critical studies that we adopted in this study to create a theme of impeachment irregularities in the era of regional head direct election.*

Keywords: Impeachment, election of regional head, direct democracy era

1. Introduction

Discourse on the impeachment system of regional heads in this country, rather lack of interest to researchers, in particular those concentrated in the field of political science, and constitutional law. This is because the reference was minimal and trend terms impeachment only popular in the context of the issues surrounding the impeachment of the president. Though the issue of impeachment of regional heads is often a political issue of local and regional administration law, which gave birth to multiple interpretations about the conception of impeachment stipulated in the Law on Local Government. This research is not really dissect these issues, but rather concentrated on a critical review of irregularities mekenisme impeachment regional head regulated in Law Number 32 of 2004 which has been revised to Act No. 12 of 2008 on Regional Government, in particular the existing Article 30 and 31. In both of these verses, regulatory systems impeachment regional head (governor) is dominated by the president's powers, without involving the participation of local institutions (DPRD).

This system in view of the researcher distort the constitutional rights at the local level, due to the determination of a regional head, not in the hands of the president, but in the hands of local communities (local democracy). The dominance of the president's powers in the impeachment process, recalling that the system design, impeachment stipulated in the Law of the Local Government, still has the characteristics of "executive of heaviness". Mahfud (1999) said that the issue is becoming one of the weaknesses of the many weaknesses formulations constitutes or 1945. The dominance of the authority of the president in the impeachment system of regional heads in Articles 30 and 31 of Law No. 32 of 2004 which has been revised to Act No. 12 Year 2008 on Regional Government are actually also distort the system of regional autonomy. Because the system does not provide space for Parliament as an institution of local parliament which has oversight of the regional heads, even not given space to enter in the system. In this context,

the regulatory system impeachment regional head (governor) was highly centralized, because the authority only to the president and not given to local institutions.

Based on these descriptions, then the problem will be studied in this research is: Does impeachment mechanism regional head regulated in Law No. 32 of 2004 in conjunction with Law No. 12 of 2008 in accordance with the system of direct democracy? How impeachment mechanism of regional heads in Indonesia after the enactment of Law No. 32 of 2004 in conjunction with Law No. 12 of 2008? Based on the formulated problem, this research addressed: First, to assess whether the impeachment mechanism regional head regulated in Law No. 32 of 2004 which has been revised into Law No. 12 Year 2008 according to a system of direct democracy. Second, to determine the procedural mechanisms impeachment regional head in the era of direct election.

2. Methodology

In this research, the authors use normative juridical approach with emphasis on an approach to analyzing the philosophical aspects of substance or nature, objectives, principles and rules concerning the application of the concept of impeachment regional head in the era of direct democracy. This method will assess on how scientific criteria neighbor conception direct election system (direct democracy), especially in the local election system. Thus the philosophical approach is used to gain an understanding of meaning in depth about impeachment ideal system of regional heads in direct election era.

To complete the research material, the method used is to use the primary legal materials, secondary and tertiary. First, the primary legal materials among others Act - 1945 after the change; (2) of Law No. 32 of 2004 which has been revised to Law No. 2008 on Regional Government; (3) laws and legislation related to the object of research. Second, the secondary material is needed that is obtained from the research literature, done by searching, collecting, researching and studying books, literature, documents, legislation, as well

Volume 5 Issue 9, September 2016

www.ijsr.net

Licensed Under Creative Commons Attribution CC BY

as a variety of articles related to support this research. Third, in the form of tertiary legal materials constitute legal materials obtained through the use of a dictionary, encyclopedia that provides an explanation of the primary legal materials and secondary law. The analytical method used to identify the rule of law is the normative content analysis of the abstract principles contained in the legislation, assess the vertical and horizontal synchronization, comparisons between one period to another period and to discuss the development trend of history. Materials existing law was in a qualitative analysis, to find out how nature impeachment system of regional heads in the era of direct democracy.

3. Results and Discussion

The Meaning of Regional Head Direct Election Systems

Based on past experience, when selecting the right head area becomes ruler, regional heads proved just be the representative of the holders of state power in the center. Dozens of years of living with the head of the region could only nod my head against the policy of the central government, has destroyed the social dynamics of the community in the area. Awareness of the rights of individuals as citizens who should be acknowledged political ruler, slowly created Indonesian man who does not have confidence in the ability of self. Life without a critical attitude matched his nose like a water buffalo. The elections turned on the tap the participation and role of the people openly. In the election this time, open ample opportunities for people to give or refuse support to regional heads who do not favor the interests of the people. In the sense that theoretically there are several advantages direct election is get closer to the state (state) to the public (society), to restore the sovereignty of the state sovereignty became popular sovereignty, providing political education to the community, psychologically direct election increases self-esteem and autonomy of the local community.

Direct elections provide legitimacy to the regional head and deputy to govern, and direct elections contributed to the development of democracy at the local level. Promises of decentralization is always a part of the practice of state government since the enactment of the 1945 Constitution, continue to enter the era constitution RIS, UUDS 1950 to 1945 confirmed by Presidential Decree of 5 July 1959. The lines of historical development proves that the ideals of decentralization is always held firmly by the Republic Indonesia, even from one period to another visible difference in intensity. Researchers in this section will describe some opinions about the philosophy of the local elections with the application of the system of direct democracy, among others, as follows. According to Amin Rais there are some benefits that can be taken in the implementation of direct local elections, namely: first, if the selection is done directly, then those selected are gaining legitimacy that really steady. Because she immediately got the authority, immediately get the power delegation bottom-up to the regent, or mayor or governor. It concerns the stability of a regional government. If elected directly, it will be steady once. Governor, regent or mayor was taking steps with sturdy, with identity, because it

is a direct mandate from the people, and not from direct representation, ie of Parliament. Second, if elected directly, the sense of responsibility of mayors or regents, would be greater to the constituents who voted for him.

Prihatmoko (2005) states that the idea of direct election emerged as a reaction to deviations representative democracy in the election by parliament last 5 years. Concern and disappointment to the practice of the elections, according to Law No. 22 of 1999 and Regulation 151/2000 was caused by two crucial issues, namely the rise of the money politics and intervention political board of local and central level. Sanit A (2004) said that the revised Law No. 22 of 1999, which gave birth to the Law No. 32 of 2004, in regulating the direct local elections, as well as the presidential election. Thus, the regional chiefs were really on the aspirations and choices of the people, not the top choice that many suspected members of the board facilitates the politics of money. Rudy Alfonso (2004), that the direct regional elections, the realization of a political instrument to support the realization of political decentralization and local democracy. through direct regional head election political education can be done at lower levels and more effective. Meanwhile, Ida L (2004), the time it has conducted pilot projects in various areas of direct elections stated that the direct election makes the city parliament lost territory. Previous elections KDH is a political event in the Parliament in the fight for their political cadres as regional leaders. Although it often can not be proven, but the view of the public indicated that direct elections would make political officials in Parliament losing the opportunity to make money politics. The statement and explanation is certainly quite critical and created a dynamic discussion is interesting to note.

Widjoyanto B (2004) said that there are at least three important things is the basis and the main reason of the community in response to direct regional head elections, namely: the public wants regional heads more accountable to their constituencies and not in fractions of a political party that elected or government official "participate" determine the outcome of the election; people requires that public policies undertaken by the head of the region more oriented toward the interests of their constituencies. Therefore, the voters will determine their own future, whether the head of a particular area can be re-elected for a second term; direct election will make the base and responsibility of regional heads to sprout to voters his true not only to the political interests of any political party strength.

That direct election, is the essence of all the demands of society above, is part of the substance tututan democracy, and rejection of the oligarchic power that character. As it turns out the government's organizers oligarchic character or context can be equated with the elitist, just creating instability (sustainable instatblity) what else amid the political consciousness of society is increasing, with an impact on the lack of legal certainty and economic downturn. Democratic governance, in which the local elections (elections) is one manifestation, it is the dream of a society in general. Because democracy is directly related to the nature of human existence.

Departing from the above explanation, then there really is no reason not to do direct elections for local heads. But if we're honest, Pilkadal system as it is today, in substance is a violation of democratic values. Why? because democracy in the leadership election must meet three conditions at least related to one another. First, every individual in the community (adults aged voters) should be given the same right to decide its leader. It departs from the principle of equal voting rights in democracy itself particularly in individuals who are free and autonomous. When individuals are represented by others in choosing its leaders, then in fact it is not a democratic state. Second, elected leaders must be the will of the public. Here is contained the meaning of leadership should be a collective decision based on the same individual rights, so it has a strong social legitimacy. Strong legitimacy can arise when a leader, including a variety of other public policy to be taken and carried out, based on the choice of a majority of community members. Of course the majority of the public's choice is dynamic, because the selection of the members of society can change from time to time, as a consequence of public assessment of the performance leadership of elected figures. Third, ensuring the confidentiality of voter eligibility. This provision departs from the moral independence of individuals from the community to determine its own destiny, without being compelled by the other party. In the context of Indonesian pluralist society where individual choice is usually directed by the elite who became patron at the bases of certain communities, but actually can be as PART of a violation of the political rights of citizens on the agenda is very important to do.

The meaning of direct election was at least an effective answer to a number of things that are attached to the election of the representative system (indirect democracy). Which suppress the culture of horse-trading, reducing the money politics, change the orientation of elitist to populist, as well as ensuring that the recruitment base leaders. And the most principal thing also is that by choosing direct regents and mayors, the sovereignty of the people is no longer symbolic. Selection in happens is the name of the people's parliament, the holder of sovereignty of the people in the region, but everything was just symbolic. Symbolic, in fact almost no relationship between parliament and the people who represent it became so in the era of representative system. Though this is the era that should be increasingly require oversized party elites to increasingly close to the hearts and minds of their constituents. In this context actually be understood about the constitutional rights of local, plays an important role especially in settings decentralized system, in particular the issue of impeachment of the head of the region (governor), if associated with the implementation of the electoral system directly (direct democracy).

Direct election system and Problems Impeachment Regional Head

Implementation of the system of direct elections, the constitution and the amendments to the 1945 Constitution, which produces changes in article 1, paragraph (2), ie the change of "popular sovereignty. The meaning of article 1, paragraph 2 describes the "sovereignty of the people", which was originally held by the Assembly, turns into sovereignty

by the Constitution. Change the principle of popular sovereignty based on the Constitution, which is the logical consequence of the 1945 amendment, of course, also affect, on the principles of the electoral system, particularly the election of president and vice president and regional head and deputy head of the region by using the direct election system. The principle of direct election is a manifestation of the theory of direct democracy (direct democracy, is a principle of classical theories of democracy, which was adopted by the 1945 Constitution after the amendment. With the adoption of the system, then indirectly, will have implications for the changes in the conception or system of constitutional law in the republic, after the amendment. as an example of course as previously described that the application of the system and mechanism of the election of President and Vice-President (election). the system is also applied, in the election of Regional Head (Governors, Regents and Mayors), with direct election system wear or wear mechanisms of pure democratic system, as applied by the city-state in ancient Greece.

The setting system of direct elections of regional heads, which was originally in the constitution does not clearly, elaborated on whether "direct elections", election or indirectly. The setting invites many interpretations (multi constitutional interpretation), as a basic foundation in the arrangement of the constitutional system in the republic. However, as already described in the previous chapter, that the interpretation of the meaning of democracy, self-evident when Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008 on Regional Government. In this Act in detail, using the principle of direct democracy (direct democracy), and not the principle of democracy indirectly (indirect democracy). Setting the principles of direct democracy, in the local election process, stipulated in article 24, paragraph 5, which reads as follows; regional head and deputy head of region elected as a pair directly by the people in the area concerned. Juridical basis in article 24 paragraph 5 of Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008 on Regional Government on Local Government, has made it clear that the position of regional head after a constitutional amendment, it is stronger than in previous times, as well as the systems that apply to: the election system in the days of the Dutch East Indies, the electoral system during the Japanese occupation, the electoral system at the time of the proclamation (Act No. 1 of 1945 regional national committee, Law No. 22 Year 1948 Principles of Local Government). period of the Republic of Indonesia (RIS) and the Provisional Constitution. Guided Democracy era (Presidential Decree of July 5 Year 1959-11 March 1966) by Presidential Decree No. 6 Year 1959. Law No. 18 Year 1965 on the Principles of Local Government. On the electoral system by using the New Order Law 5 Year 1974 On the Principles of Government in the area even at Law 22, 1999 though, still wearing the electoral system by embracing the "theory of procedural democracy or representative democracy (indirect democracy). ie in elections in the legislature. Some electoral systems or "dismissal" is actually legitimate carried out by government agencies, both central executive and legislative branches, as in accordance with the principles of representative democracy.

However, the application of this, if done in a direct election system in Law No. 32 Year 2004, such systems face a fundamental issue. Because it could be said that the electoral system in the Law No. 32 2004 This is a system that adheres to the "theory of direct democracy", and no longer a democracy indirectly as it did in the preceding systems. A rarity for the author, in analyzing "the dismissal system" neither the President nor the head of the region today, is because they use a system of procedural democracy (indirect democracy) or a Western-style democracy system before the enactment of Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008 on Regional Government. So the question then is whether the current system has changed completely, as mandated in a democratic system that is already established in the 1945 Constitution and in the amendments to the Act other organic.

Furthermore, that the most crucial and fundamental issue, which is encountered in termination system (impeachment) strip head in the era of direct elections, specifically regulated in Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008 on Regional Government, planned system or mechanism dismissal still use the paradigm or old patterns, as in the previous legislation. For example, in the case of the electoral system at the time of Proclamation (Act No. 1 of 1945 of the National Committee of the Regions, Law No. 22 Year 1948 Regional Pemerintahan Principles). The period of the Republic of Indonesia (RIS) and the Provisional Constitution. Guided Democracy period (Presidential Decree of July 5 Year 1959-11 March 1966) by Presidential Decree No. 6 Year 1959. Law No. 18 1965 On the Principles of Local Government. Electoral System In The New Order with using the Law No. 5 Year 1974 On the Principles of Regional Government even at Law 22, 1999 ". In this system the central power in both the removal system (elections), and the dismissal (impeachment) head area, is dominated by the central power.

The impeachment process is done on the previous rules (before the birth of Law No. 32 of 2004 and No. 6 of 2005), namely through the procedural institutions in this respect (President, Parliament, Supreme Court, Minister of the Interior, the Governor or the Courts) indeed legitimate, because democracy or sovereignty theory applied in the system of the 1945 pre-amendment still adhered to the electoral system of representative democracy (indirect democracy), and instead use the system of direct democracy (direct democracy). Then become a problem then is, when the theory of dismissal system is implemented in the Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008 on Regional Government is still using procedural system (parliamentary paradigm), whereas the electoral system adopted in the constitution / 1945 of the amendment, as well as in Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008 on Regional Government has changed fundamentally. More fatal mechanism of impeachment is too dominated by the central power. It is seen also that, seriousness in changing the system of direct democracy in the reform era, yet truly serious, because the normative and empiris democratic values in the "elections" in the era of direct democracy is not so perfect, or borrow a phrase Affan Gaffar practice of democracy in Indonesia is

uncommon democracy, especially when correlated with directly in the impeachment system in the era of direct democracy. The question is, are ideal, in the constitution that the settings on the system applied dismissal of the head area dominated by centralism system in a rule that designs of local governance.

Irregularities concept mentioned above, is the basic problem that must be studied more deeply, to borrow a phrase Affan Gaffar, to be seen from the dimensions of normative and empirical terms. Furthermore, according to Gaffar A (2000) that the first dimension (normative dimension) teaches us what should be Idil of democracy. For example "the sovereignty of the people's hands, and performed entirely by the People's Consultative Assembly (before amendment). Or "sovereignty of the people's hands and held according to the constitution" (as amended). But is it so? Furthermore, according to Affan Gaffar that fact, for 32 years under the New Order government, far from the fire. People only used as a sweetener in political life so that everything looks beautiful. While the dimensions of democracy empirik shows us what really happens in the political life of a country, how the shape of the normative-idiil is manifested in everyday political life. Sovereignty of the people to give maximum opportunity to the people to come speak, giving an assessment of what has been and going to be done by those who rule or govern. Sovereignty of the people is also manifested in the life where people enjoy their basic rights as human beings, they are allowed to talk about anything, instead of clamming. Finally the people's sovereignty is manifested in a life where people are free from fear.

So the main thing in the impeachment system of regional heads in the era of direct election, is because the system still adheres to the principle of indirect election, as used in the Act the previous government. Namely that the provision was in the hands of the president's impeachment. Whereas the value in the selection system adopted in the local elections in Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008 on Regional Government are the values of the election based on a foundation of values theoretical direct democracy (direct democracy), not on the theory of democracy indirectly (indirect democracy), as Law on Local Government in earlier times.

The phenomenon of the impeachment system of regional heads who still wears a centralized mechanism is, of course, does not correspond with the values of direct democracy (direct democracy). Especially if associated with the strengthening of the principles of the order of the values of local democracy (local democracy), without eliminating unitarisme system. In fact, according to Mahfud MD (2004), that the application of the system in determining the existence of the appointment of the head of the region, which is still in the hands of the center, will open the opportunity for the center to take decisions that may be contrary to the will of the people that gave birth to the undemocratic situation. If the current democratization brought his moves to the beat, while the upstream and legal product is not ready to work according to the current, then the incidence of such cases and Deliserdang Central Kalimantan is the logical consequence.

In 1956, Mohammad Hatta while receiving an honorary doctorate from the University of Gadjah Mada, said what was eventually called the Conception Hatta. That put the regional autonomy at the local level (counties and municipalities). But the implementation is not fully realized. For more dominant than the centralizing principle of decentralization. Even in 1974, set by law No. 5 Year 1974. This law adopts the conception Hatta others. Nevertheless we know this legislation is effective, efficient and bring stability in the governance process in the region, in line with the relative stability of state administration. Indeed, when the government in action runs smoothly and any benefits perceived by the public. Except by certain politicians that he felt his political life unfettered, where democratization is not running, all that happened was authoritarianism. Then came the perception that the government focus is concentrated in the center. Thus, the regional head impeachment system applied in this era of direct election in Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008 on Regional Government, was invited problematika and distortion of the system. The reason is the impeachment system is still dominated by the central power in this case the president, in particular the mechanisms of Article 30 and 31.

Impeachment System Regional Head "Ideally Turned in Parliament Local

Society in general, are happy and satisfied to see the application of a direct election system, which is applied in the local election process. Maybe if we ask them, what is the new paradigm in local elections in the reform era? then the simple answer "for the local elections, in the present era (since 2005), elected by the people, and not the Parliament". This is called an ideal system in view of the local community. But the joy of this system is certainly not in line with the system applied in impeachment regulatory mechanisms, precisely because the system is monopolized by the president's powers. This can be seen in Article 30 and 31 of Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008 on Regional Government. In Article 30 Paragraph 1 states that the regional head and/or deputy regional head suspended by the President without Parliament's proposal when it is established a felony punishable by imprisonment for a minimum of 5 (five) years or more based on court decisions. Furthermore, Article 31 Paragraph 1 stated the regional head and / or deputy regional head suspended by the President without going through Parliament proposals for allegedly committing corruption, terrorism, treason, and / or a crime against state security.

System impeachment be applicable in both the article actually did not appreciate at all the principles of political decentralization, because it is too dominated by centralism power. What's the point if these people claim that the principal conception in Law Number 32 Year 2004 has been revised to Act No. 12 of 2008 on Regional Government with the aim to set the political administration of the design for local interests, but on the other hand even the rights local politics became stuck. If that happens so then the application of the system of regional autonomy in the reform era is still not optimal performed by the central government. Researchers including one of the protest about the state of the system, because the characteristics of the system still adheres

to the system that once applied to the new era. History proves that, when the New Order started up the peak of its glory, centralization became the main strategy of local government regulation. Law No. 5 of 1974 was initiated by the Soeharto regime considered to be very centralized, and limited the space area. It could not be separated from the political constellation, which tend to be authoritarian when it was under the control of the Soeharto regime.

That the political configuration laws still are not autonomous by borrowing opinion of Prof. Dr. Mahfud MD, featured in the system impeachment regional head in Act No. 32 of 2004 which has been revised to Act No. 12 of 2008 are, in fact still patterned centralized, even containing the values of the authoritarian, as is done in the new order, namely the power of dismissal is still dominated by the executive power in this case the president. Furthermore, if the system configuration is analyzed from the perspective of politics, then the impeachment mechanism in the Act, is not in tune with the pillars of democracy and a system that is crippled, unbalanced, because it relies on executive agencies (central executive dominance). The pillars in addition to the executive branch turned out to be very weak and unable to exercise effective control, the mechanisms checks and balances on the executive. The concept of real democracy upholds the values of autonomy (local democracy), for example, think about the importance of autonomy in the strengthening of democratic values, which voiced by Muhammad Yamin and Moh. Hatta.

Democracy at the local and community level are often overlooked in discussions about democracy and democratization of political life. In fact, the local level should be the starting point of political democracy. If political democracy implies self-government, the development of human resources in rural areas, environmental protection, the most important area of control is near the neighborhood of citizens, namely the locality where he lives. Village, District, City should precede from far and wide and province-like state. How far the political units of local co-owns the power should be a benchmark of political democracy. The broader the scope of decision-making powers were taken locally, the more democratic a political system. Conversely, if the decisions taken by the agency broader and centralized, the more the system less democratic. The thesis is in substance criticized irregularities implementation of power system centralism mendistori principles of democracy at the local level.

The reality of the phenomenon, the academic world is often referred to as the "executive heavy", the executive bought up almost all the power and intervention in the various other institutions, both the formal state institutions, as well as social institutions. In this case the legal product then still elitist in character, because it always comes from above, and does not involve the participation and does not absorb the aspirations of the people. Our laws that facilitate the arrangement of the pillars of democracy, does give an opportunity to the government (executive), to intervene to weaken the pillars of democracy itself. The President has the prerogative variety, both in policy making, and in the placement of state officials that in practice more widely used

to reward services. At least in this case, too, that the impeachment of the head of the region that is clearly monopolized by the president's power is a setback in the constitutional system of the republic in the era of reform, especially in designing the ideal system of political decentralization. According to Muhtar Mas'oe'd, that one of the creations of the new order is an axiom that connects strong presidential institution, with the effective implementation of the development. There is compelling evidence showing that most of the elite in Indonesia, mainly engaged in the implementation of development major, believes that without a centralized leadership is difficult to imagine the achievement achievement presidential powers at the time, particularly economic problems. Confidence in this dictum has encouraged the theoretical and the ideology of the new order, to formulate or reinterpret the rules that could provide legal support for the proposition formal axiomatic that. 1945 and Concept Kinship, for example, are the two foundation that is suitable for this purpose. So from this phenomenon indicates that one of the demands the amendment of the constitution / 1945 is true, how to set back the president's powers are ideal, which in the new order, its power is immense and highly centralized.

In 1945 the result of this amendment, it still gives more opportunity set (attribution) with greater authority to the president almost all the important stuff. In this practice the president use his political power, to create a rule that gives more possibilities for centralized power on him. If so, then the presidential system be applicable in this country, has not touched the substance of the constitutional presidential system, but to apply repressive and authoritarian presidential system. So with reality problematic, then it can be said that, the style of and formulation in designing systems impeachment is applied in the era of direct elections now, does not take root in the region of theoretical substance, and there is nothing new in the system changes impeachment, but still showing her figure and pattern of the old, which is the figure of domination centralism.

Impeachment system violates Principles of Establishment Regulation Legislation

Indonesia is a country of law (*rechtstaat*), not state power (*machstaat*). This is the term that is used as a baseline in the process of government, both within the executive, legislative, and judicial. In the case of the formation of legislation, this state does not necessarily make the rules law at will, according to the ambitions of importance, but must be based on the principles of rule of law, which has already established formal legally. Then the various rules of law are made, should be based on the concept of the ideal of the establishment of legislation, especially Law No. 10 of 2004 which has been revised to Act No. 12 of 2011 Concerning the Establishment of Legislation. Specifically in the Law on the establishment of legislation described, about the principles surrounding the establishment of the rule of law. The principle of the law is the main pillar for the establishment of legislation. According Satjipto Raharjo, that the principle of the law can be interpreted as something that is considered, by the law society concerned as a basic human truth or truth. Because through the principles of law that ethical and social considerations into the law. Thus the

principle of law has become a sort of primary sources to support its legal system with ethical values, moral and social. How important principle of law in the establishment of a law, according to Satjipto Raharjo, the legal principle of the rule of law is like the heart that causes blood to the entire body of that order. The principle is the law that can change the quality of the rule of law, as building regulations are arranged logically and rationally, into a building of quality law also ethical, moral and social.

The importance of a principle of law, proposed by JH. Niewenhuis having said that, the principles of law established a system of mutual checks and balances. The principle of the law is often headed in the opposite direction, but in terms of the rule of law is a ban, it is a blessing for the legal principle (toward the opposite), then they control each other and thus maintain the balance. And the thing to note about the principle of law, that the legal principles in the formation of a law, not only positively affect Indonesia's legal system, but the principles of the law will even create a system in national law. Thus it can be said that the absence of legal principles, it will not be possible to create a legal system. In this discussion, will be assessed on irregularities in shaping and formulating around the issue of impeachment system of regional heads, in Law Number 32 Year 2004 has been revised to Act No. 12 of 2008. Whereas the establishment of a legislation, ideally can touch people's desire society fairly, or in other words a diproduk legislation for the benefit of society. Not the other way or a rule of public acceptance is caused by coercion authorities. Thus, in the making of legislation, sociological foundation is a basic foundation in the manufacture of these regulations. Besides, there is a philosophical foundation, the basis, views, or ideas that became the basis of ideals when poured passion and wisdom (government) into a plan or draft regulations of the state. In addition, in each rulemaking, every society always has *rechtsidee*, which is what they expect from a rule, for example, to ensure fairness, order, prosperity, security and so forth. If examined philosophically, using epistemological paradigm approach (the idealization of direct democracy), ontological (the essence of direct democracy) and axiological (value and benefit of direct democracy), then the confusion faced by Act Number. 32 of 2004 which has been revised to Act No. 12 of 2008, the distorted and pardoks of philosophical values that, as a basic foundation in the manufacture of legislation.

Hamid S. Bakti Attamimi in Speech Full Professors, which was held on Monday, 20 September 1993 10:00 am in the Auditorium of the Faculty of Law, University of Indonesia Djokostono, New Campus UI. Depok, said that it can only imagine how many laws and regulations that will flood policy in the foreseeable future, which is not necessarily all eligible principles of law and the principle of fair and good policy. But a flood of regulations that can not be 'containable' or reduced with deregulation efforts already begun for some time, then you need is to see to it that these regulations can fulfill its formation principles of fair and good. The thesis posed Attamimi A. Hamid also inspire researchers to scrutinize the back of surrounding phenomena experienced in the process of establishing rule of law at this time. Researchers, felt that the studies on the "vagueness of the

formulation, especially in a democracy," in the application of the theories of the formation of law should receive intensive and concentrated study in accordance with the applicable rules. So forward in the establishment of rule of law, there are no formulas that rule experiencing incongruity theory or principles, especially in the rules that have been formalized, such as now we can see in Act No. 10 of 2004 which has been revised into Law Number 12 Year 2011 yang a juridical basis, in making legislation. studied in, the system applied in Act No. 32 of 2004 which has been revised to Act No. 12 of 2008, in fact contrary to the rules of legislation as well as stipulated in the Act No. 10 of 2004, which has been revised to Act No. 12 of 2011. this, due to the lack of synchronization and even violate the principles of the formation of legislation, which is not in line with the principles of clarity of objectives, formulation clarity and balance, harmony, and harmony, in particular the principle or the theory of direct democracy.

In this research study, that the researchers found that one of the principles that violates the promulgation of Law No. 32 of 2004 which has been revised to Law Number 12 Year 2008, is the principle of balance, harmony, and harmony. According to Law No. 10 of 2004 which has been revised to Law Number 12 Year 2011; that in shaping the legislation should be based on the principles of formation of the legislation is good. One is to contain the substance based on the principle of balance, harmony and alignment. In explanation of Act No. 10 of 2004 which has been revised to Act No. 12 of 2011, mentioned that, is the principle of balance, harmony, and harmony is whereas the substance of the legislation should reflect a balance, harmony, and harmony, between the interests of individuals and communities in the interests of the nation and the State. In the system of impeachment head of the region, which is regulated in Law Number 32 of 2004 which has been revised to Law Number 12 Year 2008 jika studied in, then the system is contrary to the principle of making the legislation, such as mandated in the Act No. 10 of 2004 which has been revised to Act No. 12 of 2011 was. The reason is simple, because in such a system does not adhere to the principles of balance, harmony, and harmony, because the system impeachment regional head regulated in Law Number 32 Year 2004 has been revised to Law Number 12 Year 2008 on Regional Government, in particular articles 30 and 31, does not provide an opportunity for regional heads impeachment head of the region, but in the system of presidential power too domination. In other words, the system is still distorted because it is inconsistent with the principles of the formation of legislation, which is still not in line with the principles of direct democracy and the principles of de-centralism.

4. Conclusion

First, that the system impeachment regional head in the era of direct democracy, in particular in Article 30 and 31 of Law No. 32 of 2004 which has been revised to Act No. 12 of 2008 on Regional Government, must be redesigned in a revised form because it is not in line with the the concept of regional autonomy. Designers impeachment system proposed in Articles 30 and 31 is that the system of impeachment

submitted to the regional head of local institutions before it was decided at the central level in this case the president. The goal for the impeachment system that is not dominated by regional heads centralism system that collided with the essence of the system de-centralism. Second. System impeachment regional head to be redesigned because it is inconsistent with the principles of legal drafting. What is meant in this context is no harmony in the design of the system formulation of Article 30 and 31, because it is not in line with the values in the context unitarism decentralisation. The use of the presidential system in the system instead of just crashing impeachment decentralism system, but the system is not in line with the principles of the formation of laws and legislation, because it does not reflect the balance, harmony, and harmony, between the interests of individuals and communities in the interests of the nation and the State.

References

- [1] A. Hamid S. Attamimi, 1993, Law On Legislation and Regulatory Policy (Law Settings), Speech Bakti Full Professors, which was held on Monday, September 20, 1993, the Faculty of Law, University of Indonesia, Jakarta.
- [2] Amin Rais, Direct Mandate of People, Quote from the Supreme Djojosoekarto (ed), Direct Election of Regional Head, Transformation Towards Local Democracy, published by the Association of Indonesian City Council in collaboration dengan Konrad Adenauer-Stiftung.
- [3] Arbi Sanit, 2004, On the revision of the Law of Regional Autonomy: Do not Restore Centralized Power, <http://www.suarapembaruan.com>.
- [4] Supreme Djojosoekarto (ed) 2003, Public Views on Election of Regional Head of Direct, papers' writing (Chapter II). Quoted from the Supreme Djojosoekarto (ed), the direct election of regional heads, Transformation Towards Local Democracy, published by the Association of Indonesian City Council work together dengana Konrad Adenauer-Stiftung.
- [5] Affan Gaffar, 2000, Politics Indonesia, Transition to Democracy, CTK. Second, Reader Student, Yogyakarta.
- [6] Bambang Widjoyanto, 2003, quoted from the Supreme Djojosoekarto (ed), Direct Election of Regional Head, Transformation Towards Local Democracy, published by the Association of DPRD cities throughout Indonesia in cooperation with Konrad Adenauer Stiftung.
- [7] Bagir Manan, 2001, Dawn Toward Autonomous Region, CTK. First, PSH Faculty of Law UII, Yogyakarta.
- [8] Josep Riwu Kaho, 2001, Prospects for Regional Autonomy in the Republic of Indonesia, Identification of Some Factors Affecting Its management, Jakarta, King Grafindo Persada.
- [9] Ricardo J. Prihatmo 2005, local elections Direct Philosophy, Systems and Application Problem in Indonesia, Yogyakarta, Student Reader.
- [10] Kamal Alam, 2005, elections to harm Conflict Democratic Values, Mind, Thursday, September 8, 2005.
- [11] Laode Ida, 2003, Direct Election Chief, quoted from the Supreme Djojosoekarto (ed), a paper presented at the

- National Seminar on the theme "Regional Head Election City / County for Being Local Democracy" as Key Notes, held by ADERKSI. Quoted from the Supreme Djojosoekarto (ed), the direct election of regional heads, the transformation to democracy Locally, published by the Association of DPRD cities throughout Indonesia in cooperation with the Konrad Adenauer Stiftung.
- [12] Mahfud MD, 1999, The Pillars of Law and Democracy, Gama Media Adikarya IKAPI cooperation with the Foundation and The Ford Foundation, Yogyakarta.
- [13]-----, Control the power of the President Since now, the interview with Kompas, published May 13, 1999.
- [14]----- 2000, Democracy and the Indonesian Constitution, Rineka Cipta, Jakarta.
- [15]----- 2001, Politics, Law in Indonesia, CTK. Second, LP3ES, Jakarta.
- [16] Muhtar Mas'oed, 1989, the Presidential Institution, Economic and Political Structure of the New Order 1966-1971, LP3ES.
- [17]-----, 1996, the Presidential Institution and Recipe Control Politics in Indonesia, View Riza Noer Arfani, the Indonesian Democratic Contemporary, CTK First, based on the Expert Seminar PPSK cooperation with Publisher Rajawali Press , Yogyakarta.
- [18] M. Solly Lubis, 1989, Platform and Technical Regulations, CTK. Ketiga, CV. Mandar Maju, Bandung.
- [19] Ni'matul Huda, 2011, Indonesia Constitutional Law, revised edition, PT. RajaGrafindo Perdasada, Jakarta.
- [20] N. Sonthanie, Autonomous Region of the Ages, (Koran Mind), October 25, 2004.
- [21] Rudy Alfonso, 2003, Achieve Political Decentralization, paper presented in a speech at the National Seminar on the theme "Regional Head Election City / County for Being Local Democracy" as Key Notes, diselenggarakan by ADERKSI. Quoted from the Supreme Djojosoekarto (ed), the direct election of regional heads, Transformation Towards Local Democracy, published by the Association of DPRD cities throughout Indonesia in cooperation with the Konrad Adenauer Stiftung.
- [22] Rony Sautama Hotma Bako, 2003 the Constitutional Court's authority to Test Top Rights Act against the Constitution, A Comparison Of Concept of the Draft Law on the Constitutional Court, quoted in Didier Hariadi Estiko and Suhartono (ed), the Constitutional Court: New State Agency Guards Constitution, the Secretariat General of the DPR RI Center of Research and Information Services (P31), Jakarta, 2003, p. 89.
- [23] Soerjono Soekanto and Sri Pamuji, 1995, Normative Legal research, King Grafindo, Jakarta.
- [24] Zairin AM 2005, Papers Subject Theory of Legislation, the Graduate Program (S-2) Faculty of Law, Islamic University of Indonesia. Yogyakarta.
- [25] Act of 1945, results of the Third Amendment.
- [26] Law No. 12 of 2008 of the revised Law Number 32 Year 2004 on Regional Government.
- [27] Law No. 12 of 2011 of the revised Law Number 10 Year 2004 on the Establishment Regulation Legislation.