

The Legal History Analysis of Filling the Position of Asymmetric Regional Head in the Special Region of Yogyakarta

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Article	Abstract.
<p>Keywords: Asymmetric; History; Positions; Regional.</p> <p>Article History Received: 2022-08-26; Reviewed: 2022-09-01; Accepted: 2022-10-16; Published: 2022-10-17.</p> <p>DOI: 10.30659/jdh.v5i3.2428 9</p>	<p>This study aims to describe aspects of the legal history of filling the position of asymmetric Regional Head in the Special Region of Yogyakarta. This research is a normative legal research with a statute approach using primary and secondary legal materials and analyzed qualitatively descriptively. The results of the study indicate that the study of legal history shows that filling the position of Governor of DIY through a (asymmetric) determination does not conflict with Article 18 paragraph (4) of the 1945 Constitution and Article 18 B paragraph (1). The filling of the positions of Governor and Deputy Governor can be traced in various regional government laws that have been in force in Indonesia. In Act No. 22 of 1948 concerning the Principles of Regional Government: Article 18 paragraph (5) and (6) states: "Heads of special regions are appointed by the President from the descendants of families who ruled in the area before the Republic of Indonesia and who still control the area, with the conditions of skill, honesty and loyalty and keeping in mind the customs of that area. Act No. 1 of 1957, Act No. 18 of 1965, the Basic Law on Regional Government has changed due to adapting to the latest political developments, but with regard to filling the positions of Governor and Deputy Governor of DIY, it remains through appointment and is not bound by time (for life). During the New Order, Act No. 5 of 1974. Finally, based on Act No. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta Article 24, DPRD DIY stipulates Sultan Hamengku Buwono who reigns as Governor.</p>

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1. Introduction

Filling the position of Head of the Special Region of Yogyakarta (DIY) through a different designation from other regions in Indonesia can be interpreted as evidence of the solid foundation of Bhineka Tunggal Ika which is the philosophy of asymmetric decentralization of the Special Region of Yogyakarta. Essentially, the legitimacy of government in a democratic system is not limited to being measured by the election system for its leaders, but also the acceptance of the people. According Arend Liphard, the ideal democratic government must work well according to the

aspirations and needs of its people.¹ The key word is the acceptance of the people, or the people do not object to the current leadership. Acceptance "or consent" is more important than the election which actually has the potential to betray the people who voted. Democracy is the choice of modern society to organize life together.² Whatever it is, democracy is only a tool, while the goal is justice and welfare.³

Regulations about democracy, it can be understood from Paragraph IV of the Preamble to the 1945 Constitution which states that the structure of the Republic of Indonesia which is sovereign by the people is based on the values of divinity, humanity, unity and justice. The formulation of "...popularity led by wisdom in representative deliberation", is given the understanding that democracy is by prioritizing deliberation for the sake of achieving consensus on the principle of kinship.

The emergence of various forms and models of democracy, in the end followed by various approaches in providing a measure of democracy. According to Charles Tilly, there are four categories of approaches: constitutional, substantive, procedural and process-oriented. The constitutional approach emphasizes how the constitution is formed, enforced and practiced by a government, so how important the foundation of constitutionalism is for the realization of democracy. The substantive approach pays more attention to how the government improves the living conditions of its people. The procedural approach is how procedurally the government is classified as a democracy, for example the existence of direct, honest and fair elections. The process-oriented approach outlines the minimum criteria for a country to be considered democratic, such as effective participation, equality of choice, equal opportunity, placement of policy agendas, full involvement of adult citizens.⁴ Understanding democracy ideally does not use only one approach. Alexis de Tocqueville asserts that democracy is a multidimensional subject, which includes political, moral, sociological, anthropological and psychological aspects.⁵

Democracy does not operate in a vacuum, the adoption of democracy requires

¹ Sinta Devi Ambarwati (et.,al), Rekonstruksi Sistem Presidential Threshold dalam system Pemilu di Indonesia, *Jurnal Hukum Lex Generalis*, Vo. 1 No. 5 , August 2020.

² Ekawahyu Kasih, Pelaksanaan Prinsip- Prinsip Demokrasi Dalam Sistem Politik Di Indonesia Guna Mewujudkan Keadilan Sosial Bagi Seluruh Rakyat Indonesia, *Jurnal Kajian Lemhannas RI*, Edition 34, June 2018

³ Ryaas Rasyid, Pembahasan Draf RUUK DIY DPD RI, <http://www.dpd.go.id/artikel-ruuk-di-yogyakarta-pemerintah-masih-menyual-penetapan-sri-sultan-dan-sri-paduka>, accessed on 19 June 2019.

⁴ Yudi Latif, Negara Paripurna : *Historisitas, Rasionalitas dan aktualitas Pancasila*, Jakarta : Gramedia Puataka Utama, Cetakan keempat, p. 458-459
<https://freedom-institute.org/index.php/alexis-de-tocqueville-penemu-teori-demokrasi-29>, accessed on 30 July 2022.

⁵ <https://freedom-institute.org/index.php/alexis-de-tocqueville-penemu-theory-democracy-29>, downloaded, 30 July 2022.

adjustments to the socio-historical, moral-cultural realities and social ideals. Therefore, although the concept of democracy has similarities in principle, it is not single-faced, it presents itself in various ways, because it must be adapted to the context of space and time so that it can take root in various types of society.

Yudi Latif's analysis, that this deliberative democracy model resembles the "deliberative democracy," (deliberative democracy) model which was first introduced by Joseph M. Basette in 1980.⁶ The term "deliberation" comes from the Latin word *deliberatio*, in English it becomes *deliberation*. This term means "consultation", "consider" which means "consultation."⁷

Act No. 13 of 2012 Article 24, DPRD DIY stipulates Sultan Hamengku Buwono who reigns as Governor.⁸ Therefore, if there are other mechanisms or other procedures in the process of filling the position of regional head, as determined by the Governor of DIY as long as it obtains legitimacy from the community or is desired by the community, it certainly does not conflict with Article 18 paragraph (4) of the 1945 Constitution. study of the history of law filling the position of asymmetric Regional Head in the Special Region of Yogyakarta?

2. Research Methods

This research is a normative legal research with a statute approach to examine the object of research, namely the study of the legal history of filling the positions of asymmetric Regional Heads in the Special Region of Yogyakarta. The data collection method uses primary and secondary legal materials and is analyzed qualitatively descriptively, through the stages of displaying data, reducing data by selecting data that are suitable for the purpose of the study and data that are not suitable are ignored, finally drawing conclusions.

3. Result and Discussion

3.1. History of Filling the Position of Governor of DIY

The filling of the positions of Governor and Deputy Governor can be traced in various regional government laws that have been in force in Indonesia. In Act No. 22 of 1948 concerning the Principles of Regional Government: Article 18 paragraph (5) and (6) states: "The head of a special region is appointed by the President from the descendant of a family that ruled in the area before the Republic of Indonesia and who still controls the area, on condition that -requirements for skill, honesty and loyalty and taking into account the customs of the area. For special regions, a deputy

⁶ Yudi Latif, *Plenary State...* p. 458-459

⁷ F. Budi Hardiman, (2009), *Demokrasi Deliberatif: Menimbang "Negara Hukum" dan "Ruang Publik" dalam Teori Diskursus Jurgen Habermas*, Yogyakarta : Kanisius,

⁸ Ismu Gunadi Widodo, *System for Determining the Governor of the Special Region of Yogyakarta in the Regional Head Election System based on Article 18 paragraph (4) of the 1945 Constitution*, *Journal of Legal Dynamics* Vol 11 No. May 2, 2011

regional head may be appointed by the President keeping in mind the conditions referred to in paragraph (5). The Deputy Head of the Special Region is a member of the Regional Government Council."⁹

Filling the position of Governor of DIY according to Act No. 1 of 1957 which replaced Act No. 22 of 1948. Article 25 states that:

(1) The Head of a Special Region is appointed from a candidate proposed by the Regional People's Representative Council from the descendants of a family that ruled in the area before the Republic of Indonesia and who still controls the area, with due observance of the requirements of skill, honesty, loyalty and customs in that area. , and appointed and dismissed by: the President for the Special Region level I; (2) For the Special Region, from the candidates proposed by the Regional People's Representative Council, a Deputy Head of the Special Region who is appointed and dismissed by the authorities who appoint/dismiss the Head of the Special Region, with due observance of the conditions referred to in paragraph (1); Act No. 18 of 1965 that the Special Region of Yogyakarta" has the right to regulate and manage its own household based on Act No. 1 of 1957.¹⁰ That means that although the Basic Law on Regional Government has changed due to adapting to the latest political developments, it is related to filling the position of Governor and Deputy Governor of DIY remains through appointment and is not bound by time (for life).¹¹

During the New Order, Act No. 5 of 1974, namely that the 1945 Constitution is the source of law for all state apparatus; that in accordance with the nature of the Unitary State of the Republic of Indonesia, the position of the Regional Government as far as possible is uniformed.¹² As stated in Article 91 (b) that the current Regional Head and Deputy Head of the Special Region of Yogyakarta are Regional Heads and Deputy Regional Heads according to this law as the Head of the Special Region of Yogyakarta and Deputy Head of the Special Region of Yogyakarta, who are not bound by the provisions of the term of the Special Region of Yogyakarta. positions, requirements, and methods of appointment for other Regional Heads and Deputy Regional Heads

Through the General Assembly of the MPR on August 18, 2000,¹³ the MPR agreed to make a second amendment to the 1945 Constitution by amending and/or adding, among others, Article 18, Article 18 A and Article 18 B. The provisions in Article 18 relating to special regions are amended and added. Article 18 B paragraph (1) reads as follows: "The state recognizes and respects special or special regional

⁹ Article 18 paragraph (5) and (6) of Act No. 22 of 1948

¹⁰ Article 25 of Act No. 1 of 1957 concerning the Principles of Regional Government. <http://ditjenpp.kemenkumham.go.id/arsip/ln/1957/uu1-1957.pdf>, downloaded March 26, 2019

¹¹ Article 88 of Act No. 18 of 1965 concerning the Principles of Regional Government.

¹² Considerations of Act No. 5 of 1974 concerning the Principles of Regional Government, letter. b and c. <http://www.bphn.go.id/data/documents/74uu005.pdf>, downloaded, March 26, 2019

¹³ Ni'matul Huda, (2014), *Desentralisasi Asimetris dalam NKRI*. Bandung: Nusamedia,

government units that are regulated by law."

Since the amendment of the 1945 Constitution, Article 18 paragraph (4) confirms that "Governor, Regent, and Mayor respectively as heads of provincial, district and city governments are democratically elected." This change has legal and political implications for the democratic process in Indonesia where public positions such as governors, regents and mayors must be elected democratically. This means that this affirmation has paved the way for the community to demand changes to a more democratic direction in filling their regional head positions. However, the implications of direct Pilkada are not always positive. Nearly 30% more Pilkada in Indonesia ended in disputes in the Constitutional Court.¹⁴

Discussions about filling the positions of Governor and Deputy Governor of DIY lasted a long time, involving many experts and all elements of society. From the point of view of constitutional law, people's aspirations are certainly very important and can be channeled through the DPR and or the Government, because this is the institution which has the authority to make laws¹⁵, including the Law on the Special Region of Yogyakarta. In making laws, of course, paying attention to regional needs on the one hand and national interests on the other, not only requires a strong juridical basis but also requires philosophical, sociological and political foundations so that the laws formed can reach far into the future.

Appendix 1 of Act No. 12 of 2011 concerning the Establishment of Legislation." "That the philosophical basis is a consideration or reason that illustrates that the regulations formed take into account the views of life, consciousness, and legal ideals; The sociological basis is a consideration or reason that illustrates that regulations are formed to meet the needs of the community in various aspects; The juridical basis is a consideration or reason that illustrates that regulations are formed to overcome legal problems or fill legal voids by considering existing rules, which will be changed, or which will be revoked in order to ensure legal certainty and a sense of community justice.

The regulation on special areas as contained in Article 122 of Act No. 22 of 1999 it is stated that: "The privilege for the Province of the Special Region of Aceh and the Province of the Special Region of Yogyakarta, as referred to in Act No. 5 of 1974, is fixed with the provision that the administration of the government of the Special Province of Aceh and the Special Province of Yogyakarta is based on this law." Then the next arrangement, as contained in Article 226 paragraph (2) of Act No. 32 of 2004 confirms "Privileges for the Province of the Special Region of Yogyakarta as referred to in the Act No. 22 of 1999, is fixed with the stipulation that the administration of the Yogyakarta Special Region Province is based on this Law."

¹⁴ Ni'matul Huda, (2014), *Daerah Istimewa Yogyakarta dalam Perdebatan Konstitusi dan Perundang-undangan di Indonesia*. Bandung: Nusa Media,

¹⁵ Valina Singka Subekti, (2019), *Demokrasi dalam Penyelenggaraan Pemilu di Indonesia*, Bunga Rampai Memperkuat Peradaban Hukum dan Ketatanegaraan Indonesia, Sekjend Komisi Yudisial

Elucidation of Article 122 of Act No. 22 of 1999 reads: consider candidates from Paku Alam descendants who meet the requirements in accordance with this law”.

In Act No. 32 of 2004 Article 225 states: "Regions that have special status and are given special autonomy apart from being regulated by this Law, special provisions regulated in other laws are also applied." The provisions in this Law apply to the Province of the Special Capital Region of Jakarta, the Province of Nanggroe Aceh Darussalam, the Province of Papua, and the Province of the Special Region of Yogyakarta as long as it is not specifically regulated in a separate Law. This means that in Act No. 32 of 2004 concerning Regional Government, the mechanism for filling the positions of Governor and Deputy Governor of DIY through a stipulation is not explicitly stated, but is regulated by a separate law.

Regarding the filling of the positions of Governor and Deputy Governor of DIY based on Act No. 13 of 2012 certainly refers to the provisions of Article 18 Paragraph (4) of the 1945 Constitution which stipulates that the governors, regents and mayors respectively as heads of provincial, district and city governments are democratically elected. In the usual context, a democratic regional head election is carried out in two ways, namely, the election is carried out by the DPRD and direct election by the people. Nevertheless, does the meaning of democracy as referred to in Article 18 paragraph (4) of the 1945 Constitution, only have to be directly elected by the people? Legal considerations of the Constitutional Court on the judicial review of Act No. 32 of 2004, said that the formulation of "democratically elected" in the provisions of the election also considers the implementation of regional head elections in special and special regions as intended by Article 18 B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The formulation of "democratic election"[21] considers the implementation of regional head elections in areas that are special or special as referred to in Article 18 B paragraph (1), that the state recognizes and respects regional government units that are special or special in nature. regulated by law.

3.2. Discussion of the DPR RI regarding the Filling of the Governor of DIY

The discourse on the election of governors and deputy governors of DIY began when DIY had to carry out a succession of provincial government leadership upon the death of Sri Paduka Paku Alam VIII on September 11, 1998. Previously, automatic succession occurred after the death of Sultan Hamengku Buwono IX on October 3, 1988. As Deputy Governor, Sri Paduka Paku Alam VIII replaced Sultan Hamengku Buwono IX as governor. At that time there were two currents of opinion, first, Sultan Hamengku Buwono X was appointed by the DIY Regional House of Representatives (DPRD) as governor. Second, Sultan Hamengku Buwono X, who had been crowned the king of the Sultanate, was proposed to the DIY DPRD as a candidate for Governor along with other candidates (the position of deputy governor or deputy regional head was not discussed because Sri Paduka Paku Alam IX had not been crowned as the king of the Duchy).

Although the second stream of opinion intended to give a democratic feel, the people of DIY reacted and pressured the DIY and Jakarta DPRD so that the Sultan was appointed as governor. After consultation with the DIY and Jakarta DPRD, the Minister of Home Affairs Syarwan Hamid and President BJ Habibie finally decided that the DIY DPRD would determine it through a Plenary Meeting and the President ratified it through a presidential decree. Whereas in the Presidential Decree it is stated that the terms of office are the same as for the governor and deputy governor as in other regions, namely 5 years. Then, after their term of office ended in 2003, the two were re-appointed by the DIY DPRD for a second term. Referring to Act No. 32 of 2004 concerning Regional Government, that the term of office for regional heads and deputy regional heads is a maximum of two times. Finally, the problem resurfaced after the second term of the governor and deputy governor of DIY ended in 2008.[23] While the DIY Law has not yet been formed, which should be the legal basis, then to fill the vacant positions of Governor and Deputy Governor of DIY, President SBY issued a Presidential Decree extending the tenure of Sultan and Sri Paduka Paku Alam as Governor and Deputy Governor of DIY whose legal basis is not regulated in Act No. 32 of 2004, the President only responds to reality President SBY issued a Presidential Decree extending the tenure of the Sultan and Sri Paduka Paku Alam as Governor and Deputy Governor of DIY whose legal basis was not regulated in Act No. 32 of 2004, the President only responds to reality in DIY.¹⁶ Regarding this problem, Ni'matul Huda describes as follows:

"The extension of the terms of office of the Governor and Deputy Governor of DIY which has been going on twice so far does not show the clarity of the parameters for the validity period, because the first extension is valid for three (3) years, then it is extended for another one (1) year. Everything really depends on the wishes of the President and the willingness of Sultan Hamengku Buwono X and Sri Paku Alam IX as the task holders. On what basis is the Government's argument for extending the term of office to three years and extending another year for the positions of Governor and Deputy Governor of DIY, in which Act No. 32 of 2004 has determined that the term of office of regional heads is five years and after that they can be re-elected for one term of office. Perhaps because the positions of the Governor and Deputy Governor of DIY were not through elections, the extension of the terms of office of the Governor and Deputy Governor was not bound by Act No. 32 of 2004, but depends on the "political will" of the President.

The next development, the DPRD of the Special Region of Yogyakarta has held a plenary session on Monday, December 13, 2010 which resulted in 4 (four) formulations as stated in the Decree of the DPRD of the Special Region of Yogyakarta Number: 54/K/DPRD/2010, namely:

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Maintain

¹⁶ Ibid.

ing the Special Region of Yogyakarta as a Special Region within the framework of the government of the Unitary State of the Republic of Indonesia;

- Propose the filling of the Governor and Deputy Governor of the Special Region of Yogyakarta through stipulation;
- The determination in question is Sultan Hamengku Buwono and Sri Pakualam who are on the throne as Governor and Deputy Governor of the Special Region of Yogyakarta.
- Urge the central government and the Indonesian House of Representatives to immediately form and finalize the Law on Privileges for the Special Region of Yogyakarta based on historical, philosophical, juridical and socio-political aspects of the Special Region of Yogyakarta.

In more detail, the opinions of the factions in the DPRD of the Special Region of Yogyakarta, namely: the PDIP-P faction, stated:

“That the bill made by the government cannot be discussed further, because it is not in accordance with the aspirations of the DIY community, especially regarding the Governor and Deputy Main Governor. Apart from that there is no other option that for the positions of Governor and Deputy Governor there is no other alternative than the appointment of the Sultan as Governor and Pakualam as Deputy Governor”.

Meanwhile, the Democratic Party faction, emphasized that there are sections of society who do not want the appointment of Sultan and Sri Pakualam as Governor and Deputy Governor. The Golkar faction, stated that there is an inconsistency between the aspirations of the people of Yogyakarta and the central government, and this certainly has an unfavorable impact on the people of DIY. The Golkar faction declared that the Sultan and Sri Pakualam were governors and deputy governors through stipulations.

The PKS faction fought for the stipulation, by inviting the people of Yogyakarta to fight for privileges in a special way, namely a struggle that upholds noble values and dignity, lest there be spilled blood, no anarchic behavior, to show Indonesia that Yogyakarta is capable of democracy and able to accept differences of opinion and not impose their will. In its description, the PKB faction stated that it proposed the appointment of Sultan Hamengku Buwono and Pakualam as Governor and Deputy Governor for life and not affiliated with any political party. Meanwhile, the PAN faction has not yet decided whether through the stipulation or election "the existence of this DIY is an adoption of the Asymmetric Decentralization model". Likewise, the Joint Factions (PPP, Gerindra, Hanura, and PKPB).

The Center and the Indonesian House of Representatives should immediately

finalize the Draft Bill on Privileges of the DIY Province into a law in accordance with the needs and aspirations of the people of DIY, the Governor and Deputy Governor as heads of the DIY region are held by Sultan Hamengku Buwono and Pakualam who are on the throne. The decision of the DPRD of the Special Region of Yogyakarta regarding filling the positions of Governor and Deputy Governor through stipulation cannot be ignored.

In the Working Meeting of the Indonesian House of Representatives Commission II with the Government on February 2, 2011 in the context of the Level I Discussion on the Bill on Privileges of the Special Region of Yogyakarta, some of the Faction's opinions regarding the mechanism for filling the positions of Governor and Deputy Governor of DIY are as follows: Sultan Hamengku Buwono from the Sultanate and Sri Paduka Paku Alam from Paku Alaman who are legally enthroned as Main Governor and Deputy Main Governor or other designations regulated in a Special Regulation. It is further explained that:

“History empirically teaches us that, many kingdoms in the world which initially adhered to an absolute monarchy system were combined with the development of the democratic era. It is this kind of concept that is important for us to realize in organizing a constitutional government in the Yogyakarta Palace area. With this separation, it is hoped that the honor and dignity of Sultan Hemengku Buwono and Sri Paku Alam as a unifying symbol which at the same time protects and protects and maintains culture is upheld because they are no longer involved in problems that can have legal implications if the Sultan as head of government or governor who will of course face daily tasks of government. The Sultan who is on the throne wants to remain as Governor, the election is enough through the DPRD. If no other candidate comes forward, DPRD can designate the Sultan as governor.

According to the Golkar Party faction, DPR RI, there are three perspectives: discussion of the Privileges Bill for the Special Region of Yogyakarta carried out in order to carry out the mandate of our constitution, namely the 1945 Constitution of the Republic of Indonesia.

First, from a philosophical perspective, views that the role of the Sultanate and Pakualaman in the social, political and cultural life of the people of Yogyakarta does not reduce the existence of the role of the Sultanate and Pakualaman who have been running for so long and are able to provide the best hope for the people of Yogyakarta. *Second*, the historical-political perspective, views that the steps of Sultan Hamengkubuwono IX and Sri Pakualam VIII who declared the joining of Yogyakarta with the Republic of Indonesia which had just been declared brought positive developments for the struggle of the Republic of Indonesia in defending its independence. Yogyakarta even allowed itself to become the temporary capital for the central government of the Republic of Indonesia when the situation in Jakarta did not allow it to run the wheels of government. *Third*, the juridical perspective, The discussion of the Special Privileges Bill for the Province of DIY is a refinement of

the laws and other regulations governing the privileges of Yogyakarta so that this Bill will further clarify the privileges of DIY. Regarding the procedure for filling the position of Governor of DIY, the Golkar Party faction is of the opinion that it needs to be studied in depth and comprehensively, as well as taking into account the aspirations of the people of Yogyakarta and related parties in order to find the right solution in formulating the matter, so that it does not cause negative impacts that can disrupt the tranquility of the people of Yogyakarta.”

The PDIP faction expressly wants the appointment of Sultan Hamengku Buwono X and Pakualam IX as Governor and Deputy Governor of the Special Region of Yogyakarta. Questioning the position of the Sultan and Sri Paku Alam means injuring the declarations of the two kings and the position charter of President Soekarno, so that F-PDIP is of the opinion that:

“Since the government introduced the dilemma for DIY, it has touched the most basic aspect that marked the integration of DIY with Indonesia, namely the declaration of two kings, Sultan Hemengku Buwono IX and Paku Alam VIII, dated September 5, 1945 and the charter of position from President Soekarno dated August 19, 1945 which explicitly states that Nagari Ngayogyakarta Hadiningrat is integrated with the Republic of Indonesia and has the status of a provincial level with the position of regional head attached to the Sultan and Pakualam who are directly related to the President of the Republic of Indonesia. Therefore, in the view of the F-PDIP DPR RI questioning the privileges of DIY is tantamount to injuring the declarations of the two kings and the position charter of President Soekarno.”

Meanwhile, the PKS faction does not explicitly want a determination or election, only agrees to the discussion of the DIY Draft Bill on a basic basis by considering the philosophical, historical, anthropological, sociological and historical foundations in the frame, Pancasila, the 1945 Constitution and the Unitary State of the Republic of Indonesia. F-PPP is of the opinion that granting different autonomy to a region is a common practice in many countries. In the repertoire of political science, there is also a disproportionate arrangement known as asymmetric decentralization. In filling the position of regional head of DIY which was held by the Sultan and Adi Pati Pakualam who reigned as stated in the mandate of the 19 August 1945 Charter which stated that the Sultan and Adi Pati Pakualam were the reigning ones who remained in their positions. Therefore, in the regulation of this bill, it actually reaffirms the position of the Sultan and Paku Alam as Governor and Deputy Governor of the DIY Province.

The PKB faction believes that Sultan and Paku Alam can be appointed as Governor and Deputy Governor of DIY without an election process. Where this is one form of the privilege of DIY, however, F-PKB is of the opinion that this pattern implies the necessity for the Governor and Deputy Governor who are appointed without going through this election to be neutral and not involved in the membership,

management of political parties. The new Gerindra faction gave a simple suggestion, namely that the Sultan and Paku Alam who were legally on the throne did not become members or administrators of political parties as stated in the academic text of the RUUK DIY. It is meant for maintain the authority of the Sultanate and Pakualaman institutions. In contrast to the Hanura Faction's argument, it explained that:

“Efforts to make the Sultan as the Main Governor are culturally acceptable but difficult to accept politically because it will place the Sultan solely as a symbol who does not fully have political authority. Politically, the privilege of establishing the Sultan and Paku Alam as Governor and Deputy Governor must also be maintained.”¹⁷

The PAN faction firmly believes that it is inappropriate to contradict democracy with the monarchy. According to F-PAN, in order to maintain the Privileges of Yogyakarta, arrangements need to be made to strengthen democracy. Maintaining the Keraton in the DIY government and can be a model of democracy. Finally, the views of the Regional Representatives Council:

“That the will/aspiration of the people of Yogyakarta should be the spirit of democracy that must be accommodated. In this perspective, it does not mean that democracy must adhere to being elected or not, but it must accommodate the actual aspirations of the people. According to the DPD, if the people still want the leadership of Sultan Hemengku Buwono and Sri Paku Alam in the DIY government, then this is something that the government must clearly understand and accommodate, not forcing changes to the conception of the Privileges of Yogyakarta. DPD expressly approves the determination mechanism in filling the positions of Governor and Deputy Governor of DIY.”¹⁸

Finally, the DIY Draft Bill, which the DIY community had been waiting for more than 11 years, was ratified in the DPR RI's Plenary Session on August 30, 2012.¹⁹ Beginning with the discussion of the Draft Law on Privileges of the Special Region of Yogyakarta Commission II of the DPR RI since the 2004-2009 period, the KDIY Bill has not been successfully completed because there is no agreement between the DPR RI and the Government as the initiator of the KDIY Bill initiative, especially regarding

¹⁷ Ekawahyu Kasih, Pelaksanaan Prinsip- Prinsip Demokrasi Dalam Sistem Politik Di Indonesia Guna Mewujudkan Keadilan Sosial Bagi Seluruh Rakyat Indonesia, *Jurnal Kajian Lemhannas RI*, Edition 34, June 2018

¹⁸ Yudi Latif, Negara Paripurna : *Historisitas, Rasionalitas dan aktualitas Pancasila*, Jakarta : Gramedia Puataka Utama, Cetakan keempat, p. 458-459
<https://freedom-institute.org/index.php/alexis-de-tocqueville-penemu-teori-demokrasi-29>, accessed on 30 July 2022.

¹⁹ Ismu Gunadi Widodo, Sistem Penetapan Gubernur Kepala Daerah Istimewa Yogyakarta dalam Sistem Pemilihan Kepala Daerah berdasarkan Pasal 18 ayat (4) UUD 1945, *Jurnal Dinamika Hukum* Vol 11 No. 2 May 2011

the mechanism for filling the Governor's position and positions.

Deputy Governor of DIY Province. The disagreement between the DPR-RI for the 2004-2009 period and the Government in the discussion of the RUUK at that time showed that there was a difference of opinion, namely that the Central Government wanted an "election" mechanism, not a "stipulation" mechanism. While most of the people of Yogyakarta still want a mechanism for determining and if the mechanism is through elections, the Sultan and Paku Alam at that time will be placed as *paradya*, namely an institution consisting of Sultan Hamengku Buwono and Adipati Paku Alam as a unit that has a function as a symbol of protection and cultural guardian. as well as the unifying protector of DIY, while the administration of the DIY government is led by the Governor of DIY who is domiciled as District head.

In the 2009-2014 DPR-RI period, the President again sent a Presidential letter No. R99/Pres/12/2010 dated December 16, 2010 so that the Minister of Home Affairs and the Minister of Law and Human Rights (HAM) represent the President to re-deliver the RUUK DIY. During the discussion of the DIY Draft Bill at that time, it was difficult because the DPR-RI had not yet agreed with the Government's proposals and opinions, where one faction and the other were still not unanimous in responding to the mechanism.

Where the Government proposes that the DIY Regional Government institutional arrangements are designed and put forward a figure who has a "symbolic capacity" to bind diversity in one system, this symbolic function is carried out by a new institution, namely the "main governor" and "main deputy governor", which are institutions that consisting of Sultan Hamengku Buwono and Adipati Paku Alam as a unit that has a symbol, protector and guardian of culture as well as protector and unifier of the DIY community. The Provincial Government is the Governor of the DIY province and does not regulate the Deputy Governor of DIY at all. The liberation of the RUUK DIY between the Government and the DPR-RI during the III and IV Sessions of the DPR-RI Session Year 2011-2012 was still struggling with the mechanism for filling the positions of Governor and Deputy Governor of the DIY region.

With regard to filling the positions of governor and deputy governor, the arrangement for filling in the positions of governor and deputy governor begins with the requirements that must be met by candidates for governor and candidates for deputy governors and is accompanied by the required documents. Furthermore, it is regulated on the procedure for submitting candidates for governor and deputy governor candidates whose process is carried out by the DIY DPRD as a reflection of the implications of constitutional consequences as formulated in Article 18 paragraph 4 which states that governors, regents, mayors as heads of regional governments are democratically elected. The requirements stipulated in this provision are generally the same as the requirements for candidates for governor and candidates for deputy governors in other provincial areas. However, there is an

emphasis that the candidate for governor and candidate for deputy governor of Yogyakarta is not a member of a political party. This is an affirmation that the existence of the governor who is also Sultan Hamengku Buwono and the deputy governor who is also Adipati Paku Alam belongs to the people of the special region of Yogyakarta without being bound by certain political groups and fully devoted to the interests and welfare of the people of the Special Region of Yogyakarta.²⁰

At the end of his speech, the Chairman of Commission II DPRRI Agun Gunanjar Sudarsa on the RUUK DIY said:

"...Therefore, we present this Draft Law on Privileges of the Special Region of Yogyakarta to all the people of Yogyakarta without being confined to certain groups. Yogyakarta. With this promulgation, we hope that Jakarta's relations with Yogyakarta will become closer and stronger within the framework of the Unitary State of the Republic of Indonesia which has the ideology of Pancasila, with the motto *Bhinneka Tunggal Ika*. Yoga's culture is one indicator of the diversity of how the treasures of democracy in our country have become a democratic phenomenon that is different from other countries..."

3.3. History of the Governor of DIY from the Sultanate

It was Sultan Hamengku Buwono IX because of his ingenuity,²¹ as his power at the beginning of the Japanese occupation, seemed almost as limited as it was under the Dutch. At that time the executive remained in the hands of Japanese colonial officials, assisted by the Patih and his Javanese bureaucracy. However, the experience of Japanese officials at that time was no better than that of Dutch colonial officials, so they depended more on local experts. Hamengku Buwono IX used this opportunity to increase his authority by making several substantive changes, such as the establishment of the Central Advisory Council (*Chuo Sangi-in*), a regional advisory body and then followed by the handover of "most" administrative powers to the *Kootis*, including other functions. In 1944, Hamengku Buwono IX has opened the door to public services for all classes and groups of society, where previously only a few civil servants who were not of noble descent were accepted. He also piloted changes to local administrative arrangements, such as the creation of regional committees to assist *panewu*, and the training instructions for civil servants, abolishing special courts for the aristocratic groups.

Hamengku Buwono IX took on a growing role in government, after Patih Pangeran Danurejo resigned and the Sultan announced his intention to fill the position, and from 1 August 1945, he worked regularly at the *Kepatihan* building. From then on, he insisted on receiving Japanese guests in the Patih's office, and not in the

²⁰ Ibid.

²¹ Ryaas Rasyid, Pembahasan Draf RUUK DIY DPD RI, <http://www.dpd.go.id/artikel-ruuk-di-yogyakarta-pemerintah-masih-menyoyal-penetapan-sri-sultan-dan-sri-paduka>, accessed on 19 June 2019.

Sultanate. This was the goal the Sultan sought, namely to abolish the position of Patih that had existed for almost 200 years, since Hamengku Buwono I. Hamengku Buwono's decision to become executive Sultan raises various constitutional questions that remain unresolved in Yogyakarta until the 21st century.²²

The previous system, with all its imperfections, may be considered to have evolved into a constitutional monarchy system, with the Patih (or equivalent) playing the role of the prime minister or important ministers or executives, while the Sultan remains above politics as an invincible head of state or regional head. However, as Monfries puts it:

"...for an educated Sultan, trained in the art of government, such a passive role was impossible, and few people in Java knew or understood the concept of a constitutional monarchy, apart from the Dutch example...A great benefit they enjoyed, from the value it turned out to be incalculable, is the presence of an established, popular and determined local leadership."

The decision of an executive king means losing some of the aura of mystery that surrounds the figure of a Javanese king. Having to deal with day to day dealings with the occupying power, other political actors, officials and petitioners, he even risks losing face or outright political guilt if his decisions go wrong. In previous times, the Patih had acted as a full person in charge, whose decisions could be limited, strengthened, or even disowned.

4. Conclusion

The process of filling the position of regional head through the (asymmetrical) determination of the Governor of DIY in accordance with Article 18 paragraph (4) of the 1945 Constitution. It is democratic because it gains the legitimacy of its people, formally through its representatives in the DIY DPRD. In addition, in accordance with Article 18 B paragraph (1) that the State recognizes and respects special regional government units. The filling of the positions of Governor and Deputy Governor can be traced in various regional government laws that have been in force in Indonesia. In Act No. 22 of 1948 concerning the Principles of Regional Government: Article 18 paragraph (5) and (6) states: "keeping in mind the local customs. Act No. 1 of 1957, Filling the Position of Governor of DIY according to Act No. 1 of 1957 which replaced Act No. 22 of 1948. Act No. 18 of 1965 that the Special Region of Yogyakarta" has the right to regulate and manage its own household based on Act No. 1 of 1957. During the New Order era, Act No. 5 of 1974 applies. Article 91 (b) that Regional Heads and Deputy The current Head of the Special Region of Yogyakarta is the Regional Head and Deputy Regional Head according to this law as the Head of the Special Region of Yogyakarta and Deputy Head of the Special Region of Yogyakarta, who are not bound by the terms of office, terms and methods of appointment for

²² Op.cit

the Regional Head and Deputy Head.

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