



# THE 3<sup>rd</sup> INTERNATIONAL CONFERENCE AND CALL FOR PAPER

**"Legal Development in Various Countries"**



**IMAM AS SYAFEI BUILDING**  
 Faculty of Law, Sultan Agung Islamic University  
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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# **The 3<sup>rd</sup> PROCEEDING**

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## **The 3<sup>rd</sup> PROCEEDING**

“Legal Development in Various Countries”

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## INFORMATION OF THE CONFERENCE AND CALL PAPER

**WORLD CLASS ISLAMIC UNIVERSITY**  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

# Welcome to Participants on International Conference

## “LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”

*This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.*

**KEYNOTE SPEAKER:**  
**Prof. Henning Glaser**  
Thammasat University, Thailand

**IMAM AS SYAFEI BUILDING**  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

**SPEAKERS :**

1. Prof. Shimada Yuzuru  
Nagoya University, Japan
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3. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M  
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Indonesia, September 05<sup>th</sup> 2017

**WORLD CLASS ISLAMIC UNIVERSITY**  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

# International Conference

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**5**  
September  
2017

**Prof. Henning Glaser**

**SPEAKERS :**

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Nagoya University, Japan
2. Dr. Hilaire Tegnau, LL.M.  
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Organized by : Faculty of Law UNISSULA Semarang-Indonesia

**FACULTY OF LAW**  
Sultan Agung Islamic University

**IMAM AS SYAFEI BUILDING**, Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5<sup>th</sup> 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3<sup>rd</sup> Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax.(024)6582455  
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AND CALL FOR PAPER  
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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## PREFACE

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Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5<sup>th</sup> 2017

**Chairman of the Committee,**



**Dr. Anis Mashdurohatun, S.H., M.Hum**  
**NIDN : 06-02105-7002**

## GREETING FROM THE DEAN OF FACULTY OF LAW

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*As-salamu'alaikum Wr. Wb.*

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5<sup>th</sup> 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

*Wassalamu'alaikum Wr. Wb.*

Semarang, September 5<sup>th</sup> 2017

Dean,



**Prof. Dr. Gunarto, SH, SE, Akt, M.Hum**  
NIDN.062004670

## TABLE OF CONTENTS

---

|  |     |
|--|-----|
| Front Page .....   | i   |
| Information of the International Seminar .....   | ii  |
| Committee Composition .....  | iii |
| Preface .....  | iv  |
| Greeting From The Dean Faculty of Law .....  | vi  |
| <b>THE IMPACT OF ARTICLE 3(1) OF MALAYSIAN CONSTITUTION TOWARDS JUDGMENT MADE IN CIVIL COURT</b>   |     |
| Ahmad Zaharuddin Sani Sabri .....  | 1   |
| <b>INTANGIBLES INTELLECTUAL PROPERTY DEVELOPMENT CONCEPTS AS BANKING PRINCIPLES IN INDONESIA</b>   |     |
| Anis Mashdurohatun .....   | 11  |
| <b>THE HISTORICAL DEVELOPMENT OF THE FRENCH LEGAL SYSTEM</b>   |     |
| Hilaire Tegnan .....   | 23  |
| <b>JAPANESE CONSTITUTION AND STATE SYSTEM</b>  |     |
| Shimada Yuzuru .....   | 29  |
| <b>POWER AND PROCESSES UNDER THE THAI CONSTITUTION 2017”</b>   |     |
| Henning Glaser .....   | 38  |
| <b>JURIDICAL NORMATIVE REVIEW OF DIFFERENT RELIGIOUS MARRIAGE</b>  |     |
| Doni Adi Supriyo .....   | 38  |
| <b>THE IMPLEMENTATION OF ROLES AND FUNCTIONS OF REGIONAL HOUSE OF REPRESENTATIVES (DPRD) BASED ON LAW STATE FRAMEWORK TO ACHIEVE GOOD GOVERNANCE</b> |     |
| Agus Sukadi .....  | 65  |
| <b>OPTIMALIZATION OF THE ROLE OF THE DPRD (Regional House of Representative) IN THE PREPARATION OF REGIONAL REGULATIONS</b>                          |     |
| Budi Alimudin .....  | 81  |
| <b>THE PROGRESSIVE LEGAL THEORY IN THE IMPLEMENTATION OF LAW ENFORCEMENT BY THE LAW ENFORCER (POLICE, PROSECUTOR, JUDGE)</b>                         |     |
| Teguh Santoso .....  | 99  |



|  |     |
|--|-----|
| <b>CRIMINAL POLICIES IN LEGAL ACCOUNTABILITY AGAINST FACILITATION OF HEALTH SERVICES AND HEALTH PERSONNEL IN DISTRIBUTION AND SALES OF HARD DRUGS FOR SALE WITHOUT PRESCRIPTION DOCTORS</b><br>Teguh Santoso .....       | 99  |
| <b>CRIMINAL POLICIES IN LEGAL ACCOUNTABILITY AGAINST FACILITATION OF HEALTH SERVICES AND HEALTH PERSONNEL IN DISTRIBUTION AND SALES OF HARD DRUGS FOR SALE WITHOUT PRESCRIPTION DOCTORS</b><br>Yadi Supriyadi.....       | 111 |
| <b>RECONSTRUCTION OF PATIENT LEGAL PROTECTION HOSPITAL IN USE OF X-RAY IN THE HEALTH BASED FIELD OF JUSTICE</b><br>Andhika Yuli Rimbawan.....  | 127 |
| <b>CORRUPTION ASSET RECOVERY THROUGH STATE CIVIL LAWSUIT</b><br>Sujono.....  | 139 |
| <b>THE EFFECTIVENESS OF GUIDANCE OF CHILD PRISONERS IN ADULT PRISON</b><br>Wilsa .....   | 147 |
| <b>URGENCY OF VOTERS PARTICIPATION ON THE REGIONAL HEAD ELECTION IN THE STATE OF DEMOCRACY</b><br><b>(Study: Voters Participation On Governor and Vice Governor Election in Indonesia in2015)</b><br>Dewi Haryanti ..... | 152 |
| <b>COMPARATIVE RULES ON DETENTION IN SOME COUNTRIES</b><br>Dewi Haryanti .....   | 158 |
| <b>THE DEVELOPMENT OF LAW OF BUYING AND SELLING LAND IN INDONESIA</b><br>Lilik Warsito .....   | 169 |
| <b>INDONESIAN LEGAL DEVELOPMENT PROGRESSIVE LAW APPROACH TO BUILD THE LAW IN INDONESIAN SENSE</b><br>Wendra Yunaldi .....  | 179 |
| <b>REMOTE SENSING TO THE INDONESIAN SURFACE OF THE FOREIGN SATELLITE AND THE SOVEREIGNTY OF INDONESIA</b><br>Ruman Sudradjat.....  | 186 |
| <b>THE CONSTRUCTION OF THE RAHN SYARIAH LAW IN THE LEGAL SYSTEM OF WARRANTIES OF INDONESIA</b><br>Suryati .....  | 194 |
| <b>THE DEVELOPMENT OF ISLAMIC LAW IN THE LEGAL SYSTEM IN INDONESIA</b><br>Sumarwoto .....  | 194 |

|   |     |
|---|-----|
| <b>CONTRACT ABOLITION DUE TO UNDUE INFLUENCE<br/>(LAW RECONSTRUCTION OF OBLIGATION THE CIVIL CODE IN INDONESIA)</b><br>Bahmid .....   | 210 |
| <b>FIDUCIARY GUARANTEE PROBLEMATIC WITH OBJECTS<br/>INVENTORY IN CREDIT AGREEMENT</b><br>LathifahHanim and MS.Noorman.....  | 214 |
| <b>LEGAL POLICY OF INVESTIGATOR IN CASE SETTLEMENTCRIMINAL<br/>VIOLENCE IN THE HOUSEHOLD</b><br>Anwar Sanusi Simanjuntak.....   | 222 |
| <b>INDUSTRIAL RELATIONS COURT’S VERDICT IN THE CASE OF CERTAIN<br/>TIME WORKING AGREEMENT (PKWT) BECOME UNCERTAIN TIME<br/>WORKING AGREEMENT (PKWTT)<br/>(Analysis of Industrial Relations Court’s Verdict Number : 37/G/2011/PHI.Mdn)</b><br>MangarajaManurung ..... | 222 |
| <b>DOMESTIC COMPANY LAW "PMDN" AFTER SHARE PURCHASED<br/>(ACQUIRED) BY FOREIGN CITIZENS OR FOREIGN LEGAL AGENCIES</b><br>M. IrfanIslamiRambe .....  | 245 |
| <b>GUARANTEE OF RICE FARMS HAVE NOT YET BEEN HARVESTED IN<br/>SIMALUNGUN REGENCY</b><br>RiduanManik.....  | 245 |
| <b>LEGAL PROTECTION OF CONSUMERS IN CONSUMER FINANCING<br/>AGREEMENTS</b><br>Imelda Mardayanti .....  | 267 |
| <b>THE AUTHORITY OF PERFORMING A DEATH PENALTY<br/>ACCORDING TO THE DOCTRINE OF LOVE OF JESUS CHRIST<br/>IN THE BIBLE</b><br>Dame Pandiangan.....   | 278 |
| <b>CRIMINAL ACCIDENT OF NARCOTICS, APPLICATION OF<br/>LAW NUMBER 35 YEAR 2009 AND JUDICIAL DECISIONS<br/>IN THE COURTCOUNTRY KISARAN</b><br>Muhammad SalimFauziLubis .....  | 283 |
| <b>ISLAMIC LAW STUDY ABOUT DAM TAMATU' HAJJ<br/>FOR INDONESIAN JAMAAH HAJJ FOR PEOPLE’S CONSULTATION</b><br>Muthoam .....   | 290 |
| <b>IS RICH AND POOR UNIFORM IN PATENT LAW</b><br>AbdThalib.....   | 299 |

|   |     |
|---|-----|
| <b>PREVENT VIOLENT ONLINE VIDEO GAMES THROUGH<br/>LEGAL CONSTRUCTION</b>  |     |
| Yenny AS, Charlyna S. Purba, Hendrik .....  | 309 |
| <b>COMMUNITY PARTICIPATION IN THE FORMATION<br/>OF LOCAL REGULATION BASED ON JUSTICE<br/>(Analysis of Political Interaction and Law)</b>  |     |
| NursidWarsonoSetiawan .....   | 314 |
| <b>THE ROLE OF POLITICAL PARTIES IN RECRUITMENT OF CANDIDATES FOR<br/>REGIONAL HEAD AND DEPUTY REGIONAL HEADS BASED ON LAW NO. 32<br/>YEAR 2004 (CASE STUDY IN PURBALINGGA AND CILACAP)</b> |     |
| Anton Budiarto .....  | 324 |
| <b>THE BASICS AND THE FUNCTIONS OF FINGERPRINTS OF MURDER<br/>PERPETRATORS</b>  |     |
| AchmadSulchan, Annisa .....   | 343 |
| <b>RECONSTRUCTION OF DIFFERENT TYPES OF MENS REA TO PROVE<br/>CORRUPTIONBASED ON JUSTICE VALUES</b>   |     |
| ArifAwaludin .....  | 349 |
| <b>PRINCIPLES OF FAIR LAND REGISTRATION<br/>(STUDY OF PUBLIC SERVICE OF LAND REGISTRATION IN INDONESIA)</b>   |     |
| Shalman .....   | 355 |
| <b>INDEPENDENCY AND IMPARTIALITY OF AD HOC JUDGE<br/>INDUSTRIAL RELATIONS COURT (PHI) IN RESOLVING DISPUTES</b>   |     |
| ResyDesifaNasution .....  | 378 |
| <b>CONSTRUCTION WORK CONTRACT IN GOVERNMENT<br/>BASED VALUE OF BENEFIT</b>  |     |
| MokhamadHilman.....   | 387 |
| <b>SHARIA ECONOMICS DISPUTE RESOLUTION<br/>IN RELIGIOUS COURT INSTITUTIONS</b>  |     |
| Amanah .....  | 400 |
| <b>WOMEN PROTECTION POLICY FROM PHYSICAL VIOLENCE BASED ON<br/>JUSTICE VALUES</b>   |     |
| HadjarHandokojati .....   | 417 |
| <b>LEGAL ANALYSIS ON THE IMPLEMENTATION OF DIRECT APPOINTMENT<br/>OF PROCUREMENT SERVICESOF GOVERNMENT’S PROJECT</b>  |     |
| HumalaSitinjak.....   | 424 |
| <b>RECONSTRUCTION ON CORRUPTION ACT AND<br/>SHIFTING BURDEN OF PROOF ON THE SETTLEMENT OF CORRUPTION<br/>IN INDONESIA</b>   |     |
| IbnuHadjar.....   | 434 |

|   |     |
|---|-----|
| <b>COMPARATIVE RELIGIOUS APPROACH IN THE DEVELOPMENT OF NATIONAL CRIMINAL LAW SYSTEM</b><br>Sri EndahWahyuningsih.....  | 443 |
| <b>LEGAL STUDY OF DECISIONSSUPREME COURTS</b><br><b>NUMBER: 85 K / Pid.Sus / 2012Contract Abolition Due to Undue Influence</b><br><b>(Law Reconstruction of Obligation the Civil Code in Indonesia)</b><br>Ismail.....  | 449 |
| <b>THE EXISTENCE AND RECONSTRUCTION OF SALE AND PURCHASE FIQH MADHAB SYAFI'I IN GLOBALIZATION ERA</b><br><b>(Sale and Purchase Practice Study in PondokPesantrenTahfidzul Qur'an Al-Asy'ariyahWonosobo Central Java and PondokPesantren Al-Munawir Krapyak Jogjakarta)</b><br>Machfudz..... | 457 |
| <b>RECONSTRUCTION OF LEGAL SANCTIONS ON BUILDING FAILURE IN LAW NO.2 YEAR 2017 ON CONSTRUCTION SERVICES BASED ON THE VALUE OF BENEFIT</b><br>SubhanSyarief .....  | 466 |
| <b>THE CONSTRUCTION OF RESIDENTIAL SERVICES AND CIVIL REGISTRATION BY THE GOVERNMENT OF PEMATANGSIANTAR CITY IN PERSPECTIVE OF PUBLIC SERVICES LAW NO: 25 2009</b><br>PandapotanDamanik.....  | 485 |
| <b>CRIMINAL RESPONSIBILITY AND CIVIL RESPONSIBILITY ACCORDING TO COMMON LAW FOR A MAN WHO HAS SEXUAL INTERCOURSE BEFORE LEGAL MARRIAGE</b><br>MangembangPandiangan .....  | 485 |
| <b>INTERNATIONAL SEMINAR PHOTOS</b> .....   | 512 |

THE ROLE OF POLITICAL PARTIES IN RECRUITMENT OF CANDIDATES FOR REGIONAL HEAD AND DEPUTY REGIONAL HEADS BASED ON LAW NO. 32 YEAR 2004 (CASE STUDY IN PURBALINGGA AND CILACAP)

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The Student of Law Doctoral Programme UNISSULA

ABSTRACT

The Role of Political Parties In Recruitment of Candidates for Regional Head and Deputy Regional Heads Based on Law no. 32 Year 2004 (Case Study in Purbalingga and Cilacap).

This research is normative juridical research, using qualitative normative analysis. This study uses secondary legal materials as the main ingredient. The purpose of this study is, to analyze the role of political parties in the recruitment of candidates for Regional Head and Deputy Head of Region based on Law no. 32 of 2004, and to analyze the mechanism of recruitment of candidates for Regional Head and Deputy Regional Head determined by political parties.

The results showed that the role of political parties in the recruitment of candidates for Regional Head and Deputy Head of Region based on Law no. 32/2004, it can be inferred from Article 59 Paragraph (1) to determine that a political Party is the only door in the case of nomination (limited system) of the Regional Head and Deputy Regional Head. Individual candidates (independent candidates) are accommodated in the direct election process but the access is very narrow. The narrowness of individual candidate's access confirms that the nuances of candidate recruitment by the party use a closed system. The role of political parties as a means of political recruitment in order to increase the political participation of the community, is Preparing cadres of political leaders; selection of prepared cadres; as well as the struggle for qualified, dedicated, high credibility placement, and support from the public in strategic political positions. However, political parties tend to be trapped by the interests of the party and / or their respective groups and not the interests of the people as a whole, so that the role of political parties in increasing the political participation of the community, especially the role as a channel for channeling political aspirations, political socialization facilities, recruitment facilities and conflict, can not be implemented optimally. Recruitment mechanism of candidates for Regional Head and Deputy Regional Head determined by political parties in Penjaringan, Penyaringan and Penetapan, the party stipulates the name of the candidate of Regent and / or Vice Regent conducted by the Party, to accommodate the aspirations that developed in the community, whether from individuals or community groups. Requirements for candidates for Regional Head and Deputy Regional Head shall be guided by criteria in terms of prospective candidates of Bupati and Vice Regent that have been determined by the applicable laws and internal party provisions by considering the administrative selection parameters such as loyalty aspect on the basis of state and ideology of the nation, aspects of acceptability, aspects of capability, aspects of control mechanisms and compliance as legal servants (credibility of government).

## A. Background

The birth of Law no. 22/1999 on Regional Government, which took place quickly, in the end felt there is a substance or practice implementation that is not in accordance with the spirit and spirit of democracy within the Unitary State of the Republic of Indonesia (NKRI). Disadvantages in Law no. 22/1999 has been recognized by the representatives of the people in the People's Consultative Assembly (MPR) which gave rise to MPR Decree No. IV / MPR / 2000 on Policy Recommendation in the Implementation of Regional Autonomy. At the same time, in the 2000 MPR Annual Session, the Second Amendment of the 1945 Constitution has been amended, among others, amending Chapter VI on Regional Government, namely Article 18, Article 18 A, and Article 18 B. So the issuance of MPR Decree no. IV / MPR / 2000 is in line with the amendment of the 1945 Constitution.

One of the recommendations of MPR Decree No. IV / MPR / 2000 on Policy Recommendations in the Implementation of Regional Autonomy determines:

In line with the spirit of decentralization, democracy and equality of central and local relations are needed early initiative efforts to make fundamental revisions to Law no. 22/1999 on Regional Government. The revision is intended as an effort to adapt Article 18 of the 1945 Constitution.

On the basis of the mandate of MPR Decree No. IV / MPR / 2000, the need to revise is inevitable, let alone Article 18 of the 1945 Constitution which became the basis of the second amendment of the 1945 Constitution has been improved and added becomes more clear and detailed. Review and adjustment in Law no. 22/1999 which need to be done is about the election of Regional Head and Deputy Head of Region with all aspects related to the amendment, that is with the amendment of Law no. 4 of 1999 (Law No. 4/1999) on the Composition and Position of the People's Consultative Assembly, DPR and DPRD into Law no. Law No. 22 of 2003 (Law No. 22/2003) on the Composition and Position of the People's Consultative Assembly, DPR, DPD and DPRD, the authority of the Regional People's Legislative Assembly to elect the Regional Head and Deputy Regional Head in Law no. 4 of 1999 (Law No. 4/1999) has been omitted in Law no. 22 of 2003 (Law 22/2003).

The second amendment of the 1945 Constitution Article 18 paragraph (4) states that:

Governors, Regents and Mayors respectively as Heads of Provincial, District and City Governments elected democratically.

Democratic understanding contains two meanings, namely either direct or indirect election through DPRD, both of which are democratic.

Seeing the above phenomenon, the aspirations that want to choose the Head of Region and Deputy Regional Head conducted directly by the people through an electoral mechanism. These aspirations are the result of the people's insistence on the general election democratic, honest and transparent, and give equal opportunity to every person who meets the requirements of legislation to become a candidate for Regional Head and candidate for Vice Head of Region.

Law no. 32/2004 on Regional Government is then the basis for electing the Regional Head directly by the people with proposed candidates in pairs derived from political parties or a combination of political parties. A political party or a coalition of political parties

nominates candidate pairs of Regional Heads and Deputy Regional Heads who meet the requirements for the acquisition of at least 15% of the total seats of the DPRD or 15% of the accumulation of valid votes in the DPRD General Election in the region concerned. It is also stipulated that a political party or coalition of political parties can only nominate one candidate pair, the candidate pair can not be proposed by a political party or a coalition of other political parties.

There are five important considerations for the direct elections for the development of democracy in Indonesia.

1. Direct Regional Head Election is an answer to the demands of the people's aspirations because the election of president and vice president, DPR, DPD, and even the village head has been done directly.
2. Direct Regional Head Election is an embodiment of the Constitution and the 1945 Constitution. As mandated by Article 18 Paragraph (4) of the 1945 Constitution, the Governors, Regents and Mayors, respectively as heads of provincial, regency and municipal governments are elected democratically.
3. Direct elections as a means of learning democracy (politics) for the people (civic education). He became a learning media for democratic democracy for the people who are expected to form a collective awareness of all elements of the nation about the importance of choosing the right leader according to his conscience.
4. Direct elections as a means to strengthen regional autonomy. The success of regional autonomy one of them is also determined by local leaders. The better the local leaders produced, the commitment of local leaders in realizing the goals of regional autonomy, among others, to improve the welfare of the community by always paying attention to the interests and aspirations of the community to be realized.
5. Direct Regional Head Election is an important tool for the process of national leadership cadre. Whether realized or not, the stock of national leadership is very limited.

The direct election of the Head of Region (Direct Pilkada) in the perspective of decentralization and procedural democracy is a meaningful innovation in the process of democratic consolidation at the local level. At the very least, the direct Pilkada system has a number of advantages compared to the existing political recruitment system in Law Number 5 Year 1974 (Law No. 5/1974) or representative democracy in Law no. 22/1999. The role and position of the Central Government or the superior in the recruitment of the Regional Head is very large, because in addition to being the Head of Region, a Governor / Regent is also at the same time the Head of Region representative of the central government in the region in accordance with the principle of deconcentration. While Law no. 22/1999 gave a radical change to the pattern of relations between the DPRD and the Regional Head, namely the Regional Head being fully the Head of the Autonomous Region elected and accountable to the DPRD. This is considered legislative heavy so the position of the Head of the Region is very weak.

The quality of competition in Pilkada can actually be seen from the nomination system or candidate registration used. Candidates are also one dimension of active voting, that is the right of citizens to be elected. Another dimension is the right of citizens to vote. Therefore, the nomination is an important step that people have been waiting for, especially by politicians in direct elections.

Aurel Croissant says a nomination is called competitive if *de jure* does not set restrictions in order to exclude certain candidates or groups for political reasons. This

means that the provisions of legislation should provide equal access for eligible citizens to nominate themselves as Regional Heads. However, it is not incorrect to regulate the requirements of candidates because the position and function of the Regional Head requires adequate capacity and leadership capability.

Direct election candidacy system formulated in Law no. 32/2004 and Government Regulation no. 6 Year 2005 (PP No. 6/2005) on the Election, Legalization, Appointment and Dismissal of Regional Head and Deputy Head of Region is a system that has no strict limits as a limited or open system. This lack of clarity complements the recruitment characteristics of public officials in Indonesia who are half-hearted. The main indicator that the nomination of the nomination system is unclear is that the candidate registration mechanism places the political party in a very strategic or decisive position and function. The provisions on the strategic position of the political party are formulated in Article 59 Paragraph (1) of Law no. 32/2004, which determines:

Participants of the election of regional heads and deputy heads of regions shall be candidates nominated in pairs by a political party or a coalition of political parties.

The provisions of Article 59 Paragraph (1) of Law no. 32/2004 affirms that the political party is the only door in terms of nomination of Regional Head and Deputy Regional Head.

The role of political parties as a means of political recruitment in order to increase the political participation of the people, is how political parties have a large share in terms of:

1. Preparing cadres of political leaders;
2. Selection of prepared cadres as well as;
3. Struggle for qualified, dedicated, high credibility placement, and support from the public in strategic political positions.

UU no. 32/2004 also stipulates that political parties are obliged to provide the widest opportunity for individual candidates to be processed through democratic and transparent mechanisms.

Provisions which allow only political parties to be the only organizations entitled to nominate candidate pair of Regional Head and Deputy Regional Head in the election of Head of Region and Deputy Head of Region is not appropriate given that particular position. When faced with the provisions contained in Article 28 of the 1945 Constitution which determine:

Freedom of association and assembly, issuing thoughts with oral and written and so forth is established by law.

Freedom of association and assembly in this case can be categorized is the right of the community to form the organization of whether in the field of politics, social, economic, and so forth. Therefore, the legislation that will implement Article 28 of the 1945 Constitution is certainly not discriminatory in nature, by only giving opportunity to the organization of social political organization as the only organization that is entitled to nominate the Regional Head and Deputy Regional Head . However, it should be considered to provide equal opportunity to other community organizations.



## B. Formulation of the problem

Based on the above description, it can be formulated problems as follows:

1. What is the role of political party in the recruitment of candidates for Regional Head and Deputy Head of Region based on Law no. 32 Year 2004 in Purbalingga Regency and Cilacap Regency?
2. What is the mechanism of recruitment of candidates for Regional Head and Deputy Regional Head determined by political parties?

## C. Discussion

1. **The Role of Political Parties In Recruitment of Candidates for Regional Head and Deputy Regional Heads Based on Law no. 32 Year 2004 in Purbalingga District and Cilacap Regency.**

One of the concrete aspects of the role of political parties as political recruitment in question is at the time of nominating candidates conducted by political parties to become candidates for Regional Head and Deputy Head of Region.

The recruitment of candidates for candidates for Regional Head and Deputy Regional Head conducted by political parties with transparent and accountable will be read and understood by the voting community so as to generate their desire and awareness to give their political aspirations (voting rights) during the election of Head of Region and Deputy Head Daeah.

There are two recruitment patterns, namely open and closed. Recruitment is open, if the terms and procedures for displaying a character can be widely known. Characteristics: the mechanism is democratic, the level of political competence is high, the level of high leadership accountability. While recruitment is closed, the terms and procedures of nomination can not be freely known publicly. The party is based as an elite promoter from within the party's own body. This pattern makes the public can not see and assess the elite ability (prospective leaders) are displayed.

The role of political parties as a means of political recruitment in order to increase the political participation of the people, is how political parties have a large share in terms of: (1) Preparing cadres of political leaders; (2) Next selects the prepared cadres; and (3) The struggle for qualified, dedicated, high credibility placement, and support from the public in strategic political position. The greater the share of political parties in fighting for and successfully exploiting their bargaining position to win the struggle in these three things; is an indication that the role of political parties as a means of political recruitment runs effectively.

A fair, transparent and democratic political recruitment is basically to choose qualified people and able to fight for the fate of the people for prosperity and to ensure the comfort and security of life for every citizen. Errors in the selection of cadres who sit in strategic positions can distance the direction of the struggle from the taste of prosperity, prosperity, and justice for the wider community. It is therefore not excessive to say that political recruitment has implications for the formation of ways of thinking, acting and behaving every obedient citizen, obedient to the rights and obligations, yet full of the atmosphere of democracy and openness responsible for the unity and unity of the nation in the Unitary State Republic of Indonesia. However, when reviewed at a glance until nowadays the process of political recruitment has not

been running openly, transparently, and democratically which resulted in the election of cadres to be not objective. The process of preparing the cadre also seems not systematic and not sustainable. Political parties in conducting guidance on their cadres are more intense just in the run-up to political events; such as party congress, elections. The role of political recruitment is still more dominated by forces outside political parties.

In the current era of reform, the role of political parties is still very limited to the placement of political cadres in certain political positions. It also does not reflect his seriousness in recruiting quality political cadres, dedicated, and has high loyalty and commitment to the struggle to uphold the truth, justice and prosperity for the people. Political parties represent one of the important forms of community participation in developing a democratic life that respects freedom, equality, togetherness, and honesty. Through responsible freedom, all citizens have the right to assemble and union to realize their real political ideals. Equality is a principle that allows all citizens to think in terms of equality even though their position, function, and role are different. Togetherness is a vehicle to achieve the goals of nation and state so that all forms of challenges more easily faced. Political parties can play an important role in fostering freedom, equality and togetherness as an effort to form a coherent nation and state.

Article 1 of the Law of the Republic of Indonesia No. 31/2002 on Political Parties, affirming:

Political Parties are political organizations formed by a group of citizens of the Republic of Indonesia voluntarily on the basis of equality of will and ideals to fight for the interests of members, society, nation and state through general elections.

The strategic and important position of the political parties is manifested through Article 28 of the 1945 Constitution which reads: "Freedom of association and assembly, issue of thought with oral and written and so on is stipulated by law". Then in Law no. 31 of 2002 on Political Parties, in the section weighing point d mentioned: "that political parties represent one of the important forms of community participation in developing a democratic life that respects freedom, equality, togetherness and honesty."

The political system of democracy, freedom and equality is implemented in order to reflect a sense of togetherness that ensures the realization of the whole community ideals. It is acknowledged that the process leading to political life that gives the role of political parties as national assets takes place based on the principle of change and continuity that increasingly fosters maturity and democratic responsibility. This can be achieved through the arrangement of the life of the party, in addition to the system and the process of electing the election adequately.

Article 1 paragraph (1) of PP. 6/2005 on the Election, Legalization, Appointment, and Dismissal of Regional Head and Deputy Regional Head, said Pilkada is

Means of implementation of the people's sovereignty in the provincial and / or district / municipality areas based on Pancasila and the Constitution of the

Republic of Indonesia Year 1945 to elect the Head of Region and Deputy Head of Region.

Article 1 paragraph (2) of PP. 6/2005 on the Election, Legalization, Appointment and Dismissal of Regional Head and Deputy Regional Head, namely:

Regional Head and Deputy Regional Head are the Governor and Deputy Governor for the province, Regent and Deputy Regent for the district, and Mayor and Deputy Mayor for the city.

Head of Region is a political position and public office who is in charge of leading the bureaucracy to move the wheels of government. The function of governance is divided into protection, public service, and development. The Regional Head shall carry out the policy-making functions of these three functions of government. In the context of power structure, the Regional Head is the chief executive in the region.

Public Position Terminology means the Regional Head performs a policy-making function that is directly related to the interests of the people or the public, affecting the people and felt by the people. Therefore, the Regional Head must be elected by the people and must be accountable for the trust that has been given to the people.

While Political Position means mechanism of recruitment of Head of Region done by political mechanism that is through election involving political elements that is people and Political Party.

There are five important considerations for the direct elections for the development of democracy in Indonesia.

1. Direct Regional Head Election is an answer to the demands of the people's aspirations because the election of president and vice president, DPR, DPD, and even the village head has been done directly.
2. Direct Regional Head Election is an embodiment of the Constitution and the 1945 Constitution. As mandated by Article 18 Paragraph (4) of the 1945 Constitution, the Governors, Regents and Mayors, respectively as heads of provincial, regency and municipal governments are elected democratically.
3. Direct elections as a means of learning democracy (politics) for the people (civic education). He became a learning media for democratic democracy for the people who are expected to form a collective awareness of all elements of the nation about the importance of choosing the right leader according to his conscience.
4. Direct elections as a means to strengthen regional autonomy. The success of regional autonomy one of them is also determined by local leaders. The better the local leaders produced, the commitment of local leaders in realizing the goals of regional autonomy, among others, to improve the welfare of the community by always paying attention to the interests and aspirations of the community to be realized.
5. Direct Regional Head Election is an important tool for the process of national leadership cadre. Whether realized or not, the stock of national leadership is very limited.

The basis of the direct election of Head of Region is Law no. 32/2004 on Regional Government as amended by Law Number 8 Year 2005 (Law No. 8/2005) on Stipulation of Government Regulation in Lieu of Law Number 3 Year 2005 (Law No. 3/2005) on Amendment to Law No. 32/2004 on Regional Government to become Law and P. 6/2005 on Election, Legalization of Appointment, and Dismissal of Regional Head and Deputy Regional Head as amended by Government Regulation No. 17/2005 (PP No. 17/2005) on Amendment to PP. 6/2005 on Election, Legalization of Appointment, and Dismissal of Regional Head and Deputy Regional Head.

The legitimate Regional Head shall be the elected Regional Head with procedures and procedures in accordance with the provisions of legislation, through a free and fair, fair and equitable campaign and election process in accordance with social norms and political ethics, supported by the majority vote of all voters objectively, and perform the duties and functions of the Head of the Region in accordance with the commitment in the campaign and election process. The moral dimension is very strong in the overall election and post-election process.

Article 56 paragraph (2) of Law no. 32/2004 determines:

The prospective pair referred to in paragraph (1) shall be submitted by a political party or a coalition of political parties.

From the space side of each candidate's appearance, the procedure set forth in Article 56 paragraph (2) of Law no. 32/2004, not everyone who has great support from the community can compete in the direct election of the Head of Region with a wide-open door. The freedom of the people to determine the choice of the couple of Heads of Region and Deputy Head of Region he wants is limited freedom. The public can only choose candidates for Regional Head and Deputy Regional Head which have been determined by political party. This is because the law requires the only door to the entry of a package of candidate pairs of Regional Head and Deputy Head of Region only through political parties. The requirements are regulated in Article 59 paragraph (1) and (2) of Law no. 32/2004.

Article 59

(1) Participants of the election of regional heads and deputy regional heads shall be candidates nominated in pairs by a political party or a coalition of political parties.

(2) A political party or coalition of a political party as referred to in paragraph (1) may register a candidate pair if it meets the requirements for the acquisition of at least 15% (fifteen percent) of the seats of the DPRD or 15% (fifteen percent) of the accumulated votes valid in the General Election of DPRD members in the area concerned.

Provision that candidate pair of Regional Head can only be proposed by political party or coalition of political party which get 15% seat from parliament or 15% from accumulation of legitimate vote in the election of DPRD member in the area concerned, has caused the limited number of candidates for Regional Head. This limitation occurs because the transfer of nominating authority to political parties with certain requirements. Political parties that do not meet the 15% percentage will have

an inheritance with other political parties without looking at the principles and visions of political parties.

However, there are times when the qualification is dissolved because one political party withdrew its support after being registered in the KPUD. This selection process is initially done through announcements among internal political parties and through mass media. Then the next peroses political parties use different ways of each other include:

- a. Some are through political party conventions such as GOLKAR
- b. Some go through party meetings
- c. Some are through mechanisms outlined by the DPP of the political parties concerned.
- d. Some are through the convention but ultimately determined by a higher-ranking party political party (DPP).

The most complicated process faced by pro-democracy actors is getting political vehicles to become candidates for the Head of Region. UU no. 32/2004 requires that candidates for nominations of regional heads are parties or coalitions of parties with seats greater than 15%. Vehicles from major parties such as Golkar and PDI-P are hard to come by. If you can, it takes extra effort. This is because political parties have an interest in elections. Pilkada is an opportunity for political parties to get funding from candidates. Pilkada is also a means for parties to consolidate power. If the seat of the Regional Head can be seized, it will make it easier for political parties for the 2009 General Election.

Generally in the recruitment process. political parties have never requested support from the public about the figure of candidates for Regional Head and Regional Representative supported by political parties, but in the process of campaigning by political parties using the way to ask for the greatest support from the public through the mass media and down to the field directly.

So great the role of political parties in recruiting candidates for Regional Head so it is not surprising that the presence of political parties is often regarded as a political vehicle and the door that must be passed to get to the position of Head of Region. In addition, to capture candidates who are considered to have strong intellectual capacity and moral commitment to develop the region, the candidate recruitment mechanism must be democratic and transparent as set forth in Article 59 paragraph (3) of Law 32/2004 on Regional Government.

The role of political parties and political elites is very important in empowering the community considering the position and role of political parties other than as a means of socialization, recruitment and political communication between the political elite with its constituents and political parties can also play a role in reducing political conflict. Therefore, in order to create a bright politics and avoid conflict between parties, all political parties are given the same political position as stipulated in Article 8 letter a Law No. 31/2002 on Political Parties namely the rights of political parties that basically get the same treatment, equal and fair from the state.

In the opinion of the authors, in the presence of the same position for political parties participating in political competition prior to the election of Regional Head and Deputy Head of Region, it is expected that political parties can function more

optimally in scheduling public expectations such as upholding good governance principles, strengthening civil society positions, Human rights for the community, exercising control over the performance of government officials, political representatives and law enforcement agencies and combating corruption, collusion and nepotism. The tasks and challenges faced by political parties are not easy, therefore, it is natural that those who participate in the activities of political parties should be through strict selection from the public so that political parties are not always used as private business fields, but political parties are expected to be more serves as a forum for the collective aspirations of the people to create the infrastructure of community power, empowerment and the growth of people's power towards a prosperous, just, safe and peaceful society.

## **2. Recruitment Mechanism of Candidates for Regional Head and Deputy Regional Head Determined by Political Parties.**

One of the most decisive institutions to oversee the transition process and the consolidation of democracy is a political party that has a role:

First, functionally political parties are established in order to contribute to filling the positions in government. Therefore, the success or failure of the management of a democratic modern state is largely determined by how much the qualifications of human resources a political party possesses in understanding the aspects, as well as the philosophy of a democratic government. In this perspective, political parties are placed in relation to democratic values, namely in relation to power struggles competing through the electoral process.

Second, political parties, especially in developing countries, are representative of the power of civil society, which is the main and most important source of the formation of political society. From here will emerge civil political elites, which will be given the mandate by the people to form a democratic civil government.

From both aspects there is a relationship or interdependence relationship between the level of democracy in a country with the role of political parties and elites in it. In this context, democratization requires not only a strengthening, organizational management management of a political party, but also the ability of an elite in understanding the philosophy of civil democracy to be built.

The democratization process that characterizes the system of regional government as outlined in Article 18 does not refer explicitly to the pattern of direct elections by the people as determined in the election formulation of President and Vice President.

Article 18 paragraph (4) of the 1945 Constitution determines:

Governors, Regents, and Mayors respectively as heads of provincial, district and municipal governments are elected democratically.

The formulation of Article 18 Paragraph (4) of the 1945 Constitution raises the view in some people who want the recruitment pattern of the Regional Head and Deputy Regional Head to be implemented through direct elections by the people. Furthermore, even an opinion emerges that if between the pattern of presidential election with the pattern of regional head election there is a difference then it means there has been a violation of the provisions of the 1945 Constitution.

Reality above reinforces the view that the realization of democracy as desired by Article 18 paragraph (4) of the 1945 Constitution can not be achieved if it persists in the pattern of election of Regional Head by DPRD. This idea then became one of the inputs in the change of provisions concerning the government in the region.

The working component of the Pilkada system, divided into three major sections covering: input, process, and output. These three components in the provisions of Law no. 32 of 2004 Article 65 paragraph (1) and (2) mentioned that the pilkada is conducted through two phases of preparation stage and implementation phase.

The preparatory phase, carried out by the five activities includes the first notification of the DPRD to the regional head regarding the termination of tenure; both the DPRD's notice to the KPUD regarding the end of the term of office of the regional head; the third planning of the implementation, including the establishment of procedures and schedule of the stages of the implementation of regional head elections; the fourth establishment of the Supervisory Committee, PPK, PPS and KPPS; fifth notice and registration of monitors. Whereas in the pilkada stage itself consists of the first stipulation of the voter list; both registration and determination of candidates for regional head / deputy head of region; third campaign; the fourth ballot; the fifth vote count; and the six determination of candidate pairs of regional heads / deputy heads of elected areas, ratification, and inauguration.

The input process referred to in the context of the Pilkada system is related to the candidate and nomination process. Candidates are subject to the provisions of article 56 paragraphs (1) and (2) are:

- (1) The regional head and deputy regional head shall be elected in a single candidate pairs which are carried out democratically based on the principle of direct, public, free, secret, honest and fair.
- (2) The prospective pair as referred to in paragraph (1) shall be submitted by a political party or a coalition of political parties.

With regard to candidates from political parties, the authors argue the emerging problem that the party encourages voters to vote for their party cadres or political parties opens opportunities for non-cadre candidates to use political vehicles of political parties with expensive vehicle rental fees. Of course as a political cost it is reasonable to see, but with the magnitude of political compensation of this great value it will create a political form of party oligarchy or even money politics is increasingly crazy. It is feared that with this high cost of political cost, the candidate -when someday winning elections will think in such a way as to restore the political capital given when the brokering is. This concern will eventually lead to the poor performance of the Head of the Region because the concentration of its work is directed to restore political capital and not to build its people. Not to mention the possibility of corporation corruption that may occur either intended to restore the candidate's personal political capital or the delivery of compensation of support from third parties who assist the capital of candidates in winning the elections. Even the possibility of the act of aji while from a handful of parties who want to enrich themselves or to finance the political activities of the political parties concerned.

The potential of money politics in the nominating process can not be monitored and dealt with because remembering the law does not regulate money politics and the

process itself is a very difficult internal event to be accessed. Therefore, it is necessary to think deeply to make alternative candidate origin in addition to coming from a political party or a coalition of political parties also opens opportunities for non-political party candidates or "independent candidates". These non-political candidates are citizens who can nominate candidates for Regional Head and Deputy Regional Head by providing evidence of support from the public that is worth the amount of nomination if using the political party path.

The requirements of candidacy are two important things: first relating to the requirements of political parties or a combination of political parties that can propose candidate pairs and the two requirements that must be fulfilled by the candidate pair.

In relation to the requirements of political parties that may nominate candidate pairs, pursuant to Article 59 paragraphs (1) and (2) that at least have 15% of the seats of Parliament or 15% of the accumulation of valid votes in the legislative elections, in practice this provision has opened opportunity for many candidates and political parties to compete to become or nominate candidates. However, this on the other hand has political relations with an unstable checks and balances mechanism between the executive and the legislature.

The provisions of Article 59 paragraph (3) of Law no. 32/2004 provides an obligation to political parties to provide the widest opportunity for individual candidates and to process the intended candidates through democratic and open mechanisms. A democratic and transparent mechanism in this provision is a mechanism applicable in a political party or a coalition of nominating political parties and the process of organizing and deciding which is accessible to the public. Implementation of this provision of course is very dependent on the policy of political parties to build democracy and transparency in the screening of candidates.

Requirements of candidacy, namely the requirements to be fulfilled by the candidate pairs, under the provisions of the rules there are a number of adjustments to the requirements of the various complementary rules. Article 58 of Law no. 32/2004, there are 16 personal requirements that must be prepared by each candidate pair, which is then spelled out in PP. 6 of 2005 and refined in PP no. 17 of 2005. From these conditions there are a number of conditions that often generate a polemic, namely the first authentic evidence of eligibility and both qualitative evidence of some unclear basic proving conditions.

The observation of the writer that Law No.32 / 2004 did not provide a target direction to be achieved with direct elections. Of the dozens of articles contained in Law No.32 / 2004, more than 90% regulates the technical issue of the implementation of regional head elections. That is, this Act only very little regulate about the figure of the Head of Region itself, there is only one article that talked about the figure of the candidate for Regional Head, namely Article 58 which contains the requirements of a person can be a candidate for Regional Head and Deputy Head of Region.

Based on Government Regulation No.06 / 2005, the decision of a Political Party or a Political Party Combination which regulates the screening mechanism of the candidate pair of Regional Head and Deputy Regional Head is a mechanism established by a party or a coalition of political parties.



Whether the implementation of election to the Regions under Law No.32 / 2004 and Government Regulation No.06 / 2005 will result in a pair of regional heads with capacity, this is largely determined by a political party or a coalition of political parties. The electorate can not be blamed when the elected Regional Head is later not credible and accountable in leading the government, the political party can not hide behind the reason of "people's own choice". Thus, how important is the real authority and existence of political parties that are mandated by the law as the only agency authorized to propose the pair of candidates for Regional Head. This certainly needs to be supplemented by technical considerations of legislation, government ethics, regional conditionality and the existence of public support, it becomes irrelevant to talk about the party person and not the party, where it comes from and how old it is.

According to the author's observation, it is still a debate ahead of the election of candidates in determining the candidate, the matter of age for example, age is not identical with immaturity, age aging sometimes does not go hand in hand with dynamic regional needs. It should no longer debate the candidate's self-figure as long as the requirements of the law are met, just talk about the capacity to face the challenges and problems of the region and the fulfillment of the people's welfare.

Understanding the requirements and completeness of the requirements of candidates for Regional Heads, whether regulated in Law No.32 / 2004 and in PP No.06 / 2005, so many people are eligible or able to meet the requirements to be submitted or submitted as candidates for Regional Head. But whether there will be many people who will be submitted or volunteered to become candidates for Regional Head.

At the time of enactment of Law No.22 of 1999, the stock of candidates for Regional Head was so crowded and so many, there were even hundreds of names proposed by the community. Then a number of netted names were filtered into dozens of pairs of candidates who were then chosen gradually by the DPRD in plenary sessions and finally obtained a pair of elected candidates. However, it is not the case with Law No.32 of 2004, the share of candidates for Head of Region is not as busy as the enactment of Law No.22 of 1999. Even the bustling impression is about the direct election, and the stock of candidates that was once expanding, now conical as the effect of the provisions nomination determined by Law No.32 / 2004.

Article 56 paragraph (1) of Law no. 32/2004 determines:

(1) The regional head and deputy regional head shall be elected in a single candidate pairs which are carried out democratically based on the principle of direct, public, free, secret, honest and fair.

The very high democratic measure in the state and government process needs to be accompanied by another approach that is also important enough to be done that still requires a guarantee that the options available during the recruitment mechanism can really provide an opportunity for the increase of each candidate desired by the public with the door wide open.

Based on Government Regulation No.06 / 2005, the decision of a Political Party or a Political Party Combination which regulates the screening mechanism of the

candidate pair of Regional Head and Deputy Regional Head is a mechanism established by a party or a coalition of political parties.

The authors' observations of the democratic and transparent clauses, both in the laws and the rules of the party mechanism, are not strictly regulated. So someone who actually has a platform in line with the party, it is often stuck. Political parties are more concerned with how to win the election of Regional Head rather than to seek the vision of missions of candidates for Regional Head candidate in accordance with party platform. The parties should accommodate people who have platforms in line with the party platform, so it is theoretically a form of democratic accountability from party officials to their constituents.

The existence of recruitment mechanism of the Head of Region which gives authority to the central party management to determine the candidate for Head of Region, this illustrates that the party central party does not seem willing to simply hand over the candidate of Regional Head to the region. The mechanism of determining the candidates for Golkar or PDI-P heads of the Golkar Party both equally grants a great authority to the Central Executive Board (DPP). In the Golkar Party, the authority of the central board has existed since the election process of the Regional Head candidate. Although the determination of a single candidate to be carried by Golkar was conducted in a meeting attended by a combination of central and regional administrators. This mechanism is different from PDI-P, the PDI-P's determination of candidate mechanisms does provide an extensive opportunity for branch managers in districts to attract candidates. However, the authority to choose and to appoint a single candidate to be supported by the PDI-P is done by the central board. Even in the meeting of the determination of the candidate for Regional Head, the Central DPP does not include the branch / regional management. In other words, if a pro-democracy actor wants to get a vehicle from a big party like Golkar Party and PDI-P, he not only has a lobby with local administrators but also party officials at the center that will take time, cost and effort. Moreover, Golkar and PDI-P parties tend to favor well-established candidates as their candidate is primarily an incumbent or a local entrepreneur.

The authors argue that the PDI-P crisis of PDI-P has not performed the functions of the political parties consequently. The mechanism of democracy is less developed in the party body. Nationalism as party ideology is inconsistently championed by party officials, and finally, wong cilik as political identity as well as PDI-P's mass base is not fought for its interests precisely at the time the party reaches the peak of the party's identity crisis is also detected from over dominance role of chairman in PDI-P . With the right of a single formation and prerogative, the power of the chairman becomes too great. The magnitude of the chairperson's power has created a distortion of internal party policy making. The PDI-P General Chairperson simply proposes something to which he wishes, or makes party policy without the basis of his decision as mandated by the party's constitution. The fact of the use of the prerogative of the chairperson, in the case of the determination of the candidate for Regional Head, as is the case in Kabupaten Cilacap, the result of Rakercabsus PDI-P of vote acquisition for the candidate of Bupati Hj. Siti Fatimah obtained the highest votes compared to the votes of all candidates who entered Rakercabsus. But according to the recommendation of DPP PDI-P H. Probo Yulastoro, S. Sos., M.M., M.Si. determined as a candidate for Regent from PDI-P, while for H. Tatto Suwanto Pamuji (Entrepreneur) was appointed as candidate for Vice Regent.

If a political party is eligible in determining a pair of candidates from its party or a coalition of parties, there is a moral responsibility and may be regarded as an obligation for a political party to implement it in accordance with article 59 of Law No. 32/2004:

First, a political party or a coalition of political parties shall open the widest possible opportunity for a qualified individual candidate as referred to in Article 58 and further process the intended candidate through a democratic and transparent mechanism.

Second, In the process of determining candidate pairs, political parties or coalitions of political parties take into account the opinions and responses of the people.

The research on internal mechanism of each political party is different. Political parties provide containers, mechanisms and channels for independent candidates, as stated in Law no. 32/2004. But it all depends on whether the political parties in the region will be obedient to constitutional rules or not.

To build democracy and improve the condition of the nation that has been entangled with corrupt octopus and destroyed its social ethics and is staggered by bankruptcy and moral depravity and embody a progressive and transparent political life, one of the efforts that need to be done is to create a conducive political climate, healthy for the party so that political parties become a forum for coaching and maturation of candidates to be offered to the public. In this case, the candidates are those who have the competence and vision, faithful to hold the mandate, have a strong moral integrity to build democracy and uplift the quality of life of the people, have the intellectual achievements and has been tested its devotion to the community so far and able to respond and support community. Or as proposed by Herbert Feith and Lance Castle in his classic Indonesian Political Thinking 1945-1965 (1970) that political thought in Indonesia is segmented in several streams, as well as the overwhelming challenge faced by the political elite that they must be able to uplift and liberate the people from all forms of backwardness such as poverty and ignorance.

Although Herbert Feith's works were written more than three decades ago, the correctness of the signal is still relevant today. The role of political parties and political elites is very important in empowering the community in view of the position and role of political parties other than as a means of socialization, recruitment and political communication between the political elite and its constituents as well as political parties into aggregation instruments and articulation of interests and can also play a role in reducing political conflict. Therefore, in order to create a bright political spectrum and avoid inter-party strife, all political parties must be given equal political positions as set forth in Article 8 letter a of Law No 31/2002 on the rights of political parties that essentially treat the equal, equal and fair of the state to political parties. With the same position for political parties participating in political competition in the run up to the election of regional heads, it is expected that political parties can function more optimally in scheduling public expectations such as upholding good governance principles, strengthening civil society positions, protecting human rights for the community, government, political representative institutions, and law enforcement agencies and eradicating the disease of corruption, collusion and nepotism. It seems that the tasks and challenges faced by political parties are not easy. Therefore, it is also natural that those who participate in the activities of political parties should be through

strict selection from the public so that political parties are not always used as private business fields, but political parties are expected to play a more role as collective aspirations of the people for the creation of infrastructure the power of society, the empowerment and the growth of people's power towards a prosperous, just, safe and peaceful society.

#### **D. Conclusions**

1. The role of political parties in the recruitment of candidates for Regional Head and Deputy Regional Head under Law no. 32/2004, it can be inferred from Article 59 Paragraph (1) to determine that a political Party is the only door in the case of nomination (limited system) of the Regional Head and Deputy Regional Head. Individual candidates (independent candidates) are accommodated in the direct election process but the access is very narrow. The narrowness of individual candidate's access confirms that the nuances of candidate recruitment by the party use a closed system. The role of political parties as a means of political recruitment in order to increase the political participation of the community, is Preparing cadres of political leaders; selection of prepared cadres; as well as the struggle for qualified, dedicated, high credibility placement, and support from the public in strategic political positions. However, political parties tend to be trapped by the interests of the party and / or their respective groups and not the interests of the people as a whole, so that the role of political parties in increasing the political participation of the community, especially the role as a channel for channeling political aspirations, political socialization facilities, recruitment facilities and conflict, can not be implemented optimally.
2. Recruitment mechanism of candidates for Regional Head and Deputy Regional Head determined by political parties in Penjaringan, Penyaringan dan Penetapan, the party stipulates the name of the candidate of Bupati and / or Vice Regent conducted by the Party, by accommodating the aspirations that developed in the community, whether coming from individuals and community groups. Requirements for candidates for Regional Head and Deputy Regional Head shall be guided by criteria in the requirement of candidate of Regent and Vice Regent which have been determined by the prevailing laws and regulations as well as the internal stipulation of the party mechanism is not regulated explicitly. So someone who actually has a platform in line with the party, it is often stuck. Political parties are more concerned with how to win the election of Regional Head rather than to seek the vision of missions of candidates for Regional Head candidate in accordance with party platform. The parties should accommodate people who have platforms in line with the party platform, so it is theoretically a form of democratic accountability from party officials to their constituents by considering the administrative selection parameters of candidates such as loyalty aspects on the basis of state and nation's ideology, acceptability aspect, capability aspect, aspects of control mechanisms and compliance as legal servants (credibility of government)

#### **E. Suggestions**

Should the executive and political party have similarities in the vision and mission of development, so that there is a similar understanding of the picture of the future situation that is desired by all regional elements, where government agencies must be brought in order to exist, anticipative, and innovative, so ethically also responsible for its implementation in the form of plans and implementation of annual, five year and long term development. On a normative level, this relationship is then legally validated in various

forms. The function of the political party control is crucial to keep the executives running in the same vision, mission, activities and programs.

To ensure the running of the political party role in increasing the participation of political society optimally, it is necessary to harmonize and balance the relationship between social and political forces and balance and harmony of the role of the political party itself as a means of channeling the aspirations of the people, the means of political socialization, the means of political recruitment, conflict regulator.

## BIBLIOGRAPHY

- Alfian, 1991, **Komunikasi Politik Dan Sistem Politik Indonesia**, Gramedia Pustaka Utama, Jakarta.
- Asshiddiqie, Jimly, 2002, **Nomokrasi Modern: Konsepsi Negara Hukum yang Demokratis, dalam "Refleksi Hukum dan Konstitusi di Era Reformas"**, Ginting, Budiman dkk (ed), Pustaka Bangsa Press, Medan.
- Azed, Bari, Abdul, dan Amir, Makmur, 2006, **Pemilu Dan Partai Politik Di Indonesia**, Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, Jakarta.
- B.N., Marbun, 2003, **Bagaimana Memenangkan Pemilihan Umum**, Pustaka Sinar Harapan, Jakarta.
- Bhakti, Nusa, Ikrar. dan Sahbudi, Riza (eds) 2001, **Menjauhi Demokrasi kaum Penjahat- Belajar dari Kekeliruan Negara-negara Lain**, Mizan, Bandung.
- Budihardjo, Miriam, 1993, **Dasar-Dasar Ilmu Politik**, PT. Gramedia Pustaka Utama, Jakarta.
- Gaffar, Afan, 1999, **Politik Indonesia Transisi Menuju Demokrasi**, Pustaka Pelajar Indonesia, Cetakan I, Mei,
- Guillermo O'Donnel, Philippe Schmitter, and Whitehead, **Transition From Authoritarian Rule : Prospect for Democracy**, Baltimore and London: John Hopkins University Press, 1986 dalam Noviantika Nasution, **Bobolnya Kandang Banteng, Sebuah Otokritik**, Suara Bebas, Jakarta
- Iskandar, 1998, **Hukum Tata Negara Bidang Pemerintahan Daerah**, Diktat, FH UNDIP, Semarang.
- Koirudin, 2004, **Parpol dan Agenda Transisi Demokrasi**, Pustaka Pelajar, Yogyakarta.
- Lev, Daniel, S, 1990, **Hukum Dan Politik Di Indonesia**, PT. Pustaka LP3ES Indonesia, Jakarta.
- MD, Mahmud, M., 1993, **Demokrasi dan Konstitusi di Indonesia**, Liberty, Yogyakarta.
- \_\_\_\_\_, 1999, **Hukum dan Pilar-Pilar Demokrasi**, Gama Media, Yogyakarta,
- \_\_\_\_\_, 1999, **Pergulatan Politik Dan Hukum Di Indonesia**, Gama Media, Yogyakarta.

- \_\_\_\_\_, 2001, **Dasar dan Struktur Ketatanegaraan Indonesia**, RinekaCipta, Jakarta.
- \_\_\_\_\_, 2001, **Politik Hukum Di Indonesia**, PT. Pustaka LP3ES Indonesia, Jakarta.
- Manan, Bagir, 2004, **Teori Dan Politik Konstitusi**, FH., UII, Press, Yogyakarta.
- \_\_\_\_\_, 2004, **Perkembangan UUD 1945**, FH., UII, Press, Yogyakarta.
- Marbun, SF.dan Mahfud, Moh., 1987, **Pokok-pokok Hukum Administrasi Negara**, Liberty, Yogyakarta.
- Mardjono, H., Hartono, 1998, **Reformasi Politik Suatu Kecharusan**, Gema Insani Press, Jakarta.
- Masnad, Dhurorudin, 1998, **Reformasi Sistem Pemilu Dan Peran Sospol Abri**, Gramedia Widiasarana Indonesia, Jakarta.
- Mas'ood, Mohtar dan Colin Mac Andrews (ed.), 1991, **Pengantar Perbandingan Sistem Politik**, Gajah Mada University Press, Yogyakarta.
- Prihatmoko, Joko, J., 2005, **Pemilihan Kepala Daerah Langsung (Filosofi, Sistem dan Problema Penerpan Di Indonesia)**, LP3M Universitas Wahid Hasyim, Semarang.
- Reilly, Ben, 1999, **Reformasi Pemilu di Indonesia : Sejumlah Pilihan dalam Almanak Parpol Indonesia**, Yayasan API, Jakarta.
- Soekanto, Soerjono dan Mamuji, Sri, 2003, **Penelitian Hukum Normatif**, Raja Grafindo Persada.
- Sukarna, 1990, **Sistem Politik**, PT. Citra Aditya Bakti, Bandung.
- Soemantri, Sri, 1987, **Prosedur dan Sistem Perubahan Konstitusi**, Alumni, Bandung.
- Soemitro, Hanitijo, Ronny, 1985, **Metodologi Penelitian Hukum**, Ghalia Indonesia, Jakarta.
- Suseno, Magnis, Frans, 1988, **Etika Politik – Prinsip-Prinsip Moral Dasar Kenegaraan Modern**, Gramedia, Jakarta.

### **Perundang-undangan :**

- Undang-Undang Dasar 1945
- Undang-Undang No. 31 Tahun 2002 Tentang Partai Politik
- Undang-Undang No. 32 Tahun 2004 Tentang Pemerintahan Daerah
- Undang-Undang Nomor 12 Tahun 2003 tentang Pemilihan Umum Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah,
- Undang-Undang Nomor 23 Tahun 2003 tentang Pemilihan Umum Presiden dan Wakil Presiden
- Undang-Undang Nomor 22 Tahun 2007 tentang Penyelenggaraan Pemilihan Umum.

Peraturan Pemerintah Nomor 6 Tahun 2005 tentang Pemilihan, Pengesahan, Pengangkatan, dan Pemberhentian Kepala Daerah dan Wakil Kepala Daerah

Internet ;

<http://www.media-indonesia.com>.

<http://www.perdaonline.org>.

<http://www.kompas.com>., edisiselasa, 22 Februari 2005

<http://www.uny.ac.id/akademik/sharefile/files/31012008103259>

<http://www.jurnalnasional.com>

<http://www.forum-politisi.org>.