

DIGNIFIED-BALANCED CONSTITUTIONAL DESIGN AS A LEGAL RECOGNITION OF IDENTITY POLITICS IN THE ELECTION FOR REGIONAL HEADS IN INDONESIA

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ABSTRACT

The decline of democracy is arguably attributed to the electoral process itself due to the incremental degradation of rights and democratic procedure. However, notable figures point out that the underlying reason for such collapse is the inhospitable environment that hinders the proper functioning of democracy. In that, it is this environment of increased tension that gives rise to differences in political identity. Such practices have been seen in several regional elections held in Indonesia which weaponizes factors such as race and/or religion for political purposes. This paper shall assess the relationship between the aforementioned practices, its effect on the Indonesian democratic practices and the relevant changes that shall be brought about through the constitution in order to address such issues to ensure justice and harmony. This paper relies largely on literature and makes use of normative legal research. The findings of this paper are set out in a descriptive and instrumental manner which looks into the emergence and development of identity politics in Indonesian regional elections. This paper would also assess the way in which values of Pancasila and Bhinneka Tunggal Ika as the pillars of the nation could be incorporated into the Constitution to tackle the negative effects of identity politics in the form of dignified balance constitutional design which characterizes as harmony, humanizing humans, incremental, and resilience.

Keywords: Identity Politics, Constitutional Law, Consociational, Indonesia,

INTRODUCTION

Politic-economic institutions can either have extractive or inclusive properties, both of which serve as a major factor in determining whether a state shall successfully prosper or rather be doomed to poverty (Acemoglu & Robinson, 2012). Thus, it is reasonable to claim that a state is largely influenced by the kinds of politic-economic institutions within it. Amongst the various forms of politic-economic designs, one that most notably stands out from the others is the capitalistic system with its democratic liberal design (Asshiddiqie, 2007).

It is commonly accepted that democracy is largely embraced by a vast majority of the existing states. A survey conducted by Larry Diamond in 2006 indicated that at the very least 114-119 states are implementing electoral democracy (Diamond & Plattner, 2015). As quoted by David van Reybrouck, *World Values Survey* – an international scale research project that targeted 73.000 people (85% of current world population), stated that 91,6% of the subjects consider democracy to be the best viable governmental system for today (Reybrouck, 2016). However, since 2006, both liberalism and electoral democracy have been facing a decline.

Diamond stated that since 2000, there have been as many as 25 democratic states that have faced such a decline (Diamond & Plattner, 2015). The reasons of such decline vary between states. In some, the decline of democracy can be traced back to a military coup, while in others it can be attributed to the incremental degradation of rights and democratic procedure. Eventually, the latter ended up changing the core of democracy and turned it to a “competitively authoritarian” system. This concept is defined by Steven Levitsky as:

“Competitive authoritarian regimes are civilian regimes in which formal democratic institutions exist and are widely viewed as the primary means of gaining power, but in which incumbents’ abuse of the state places them at a significant advantage vis-à-vis their opponents. Such regimes are competitive in that opposition parties use democratic institutions to contest seriously for power, but they are not democratic because the playing field is heavily skewed in favor of incumbents. Competition is thus real but unfair.” (Levitsky & Way, 2010)

A conservative magazine, *The Economist*, correctly described that at the very least there are two major issues as to why democracy lost its momentum, namely: the 2007-2008 financial crisis and the rise of China (The Economist, Mar 2014). The essay concluded by saying that the rationale behind the failed democracy is because it concentrates too much on the election process. In fact, the view that an election-centric democracy is infectious is also supported by David van Reybrouck who claimed that: “But democratic fatigue syndrome (referendum fever, declining party membership, and low voter turnout) is not so much caused by the people, the politicians or the parties – it is caused by the procedure. Democracy is not the problem. Voting is the problem.” (Reybrouck, 2016). Surprisingly enough, although elections have been widely recognized as a valid method to breed and grow democracy (an approach to understand ‘*the will of the people*’), it has only been practice for the last 200 years, specifically after the American and French revolution. The paradigm that democracy is interchangeable with election is further reflected in Article 21 (3) of *Universal Declaration of Human Rights* which states: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

However, such view is strongly opposed by Thomas Edward Flores and Irfan Nooruddin, as both of them believe that “democratic recession” is not caused by election. They take the position that democracy fails not because of overreliance to election but because of unfavorable politic-economic conditions. They claim that “countries that attempt elections without the right conditions do more damage to long-term democratic development than not.” In another words: “electoral seeds fail to bear democracy fruit not because they are poor quality, but because of the inhospitable terrain in which they are sown.” (Flores & Nooruddin, 2015). Despite being a socially engineered system, elections nevertheless carry an irreversible problem: it anchors too much on the liberal market. This liberal market purposely bargains ideas, values, ideologies, and even anatomical differences or otherwise known as political identity. As such, it is not at all surprising that liberal democracy gives birth to transactional politic. As elaborated by Seyla Benhabib:

“Our contemporary condition is marked by the emergence of new forms of identity politics all around the globe. These new forms complicate and increase centuries-old tensions between the universalistic principles ushered in by the American and French Revolutions and the particularities of nationality, ethnicity, religion, gender, “race”, and language.” (Benhabib, 2002)

According to Samuel P. Huntington, identity crises that leads to fragmented society and gives rise to differences in political identity began to form at the end of 20th century. This was triggered by multiple factors including the rise of global economy, rapid development in

technology and transportation, growth in migration rate, global expansion of democratic values, as well as the end of cold war and the soviet union as a politic-economic system. He further added:

“Modernization, economic development, urbanization, and globalization have led people to rethink their identities and to redefine them in narrower, more intimate, communal terms. Sub-national cultural and regional identities are taking precedence over broader national identities. People identify with those who are most like themselves and with whom they share a perceived common ethnicity, religion, traditions, and myth of common descent and common history. In the United States this fragmentation of identity manifested itself in the rise of multiculturalism and racial, ethnic and gender consciousness. In the other countries it takes the more extreme form of communal movements demanding political recognition, autonomy, or independence” (Huntington, 2004)

This symptom has grown more pertinent in the last decade, particularly in global politics. The birth and rapid growth of right-wing populism in western countries seem to gradually erode liberalism and social-democratic concept. As opined by Müller, populism that grows and spreads in multiple countries nevertheless remain as part of politic identity (Müller, 2000). In the past the issue taken advantage of was economic issues, however it is no longer of much importance considering that Fareed Zakaria once stated that the “*fundamental cause of this rise of populism, is the decline of economics as the pivot of politics.*” (Zakaria, 2016). At the same time, it is clearly visible that there are still two contesting political viewpoint, considering that right-wingers are still trying to propose a conservative idea (limited government) while left-wingers strictly emphasize on government involvement to realize a welfare-state. Right-wingers at times demand privatization of foreign companies and the granting of more health insurances, while on the other hand right-wingers commonly advocate for tax reforms that would better accommodate the upper-class and suppress the growth of *laissez-faire* economy. However, in the 1970s, the policies enacted by governments no longer created major structural changes in economies. Thus, it is reasonable that politicians no longer revolved around economic issues to support their political stance. Consequently, “culture” becomes a preferable alternative to promote their political agenda and this is usually done by relying on notions like gender, race, religion, ethnicity, and self-expression (LGBT). This concept is the one considered by Ronald F. Inglehart and Pippa Norris as *cultural backlash* (Inglehart & Norris, 2016).

Simultaneously, the rise of populism and the spirit of political identity too begins to grow in Indonesia. Indonesia historically never faced issues in regard to politic identity, particularly one that concerns race and belief used massively and spitefully as political weapons, except in the election of Jakarta gubernatorial 2017. As well laid out by Greg Fealy “What made this election so significant was the role of race and faith in determining the final result. The open vilification of Ahok on religious and racial grounds has no precedent in any Indonesian election.” (Fealy, 2017). In fact, *The Economist Intelligence Unit* (The EIU), an index democratic survey composed by *The Economist* in 2017 states that democratic index in Indonesia drastically dropped from #48 to #68 because of what happened in Jakarta election. The magazine noted:

“While Indonesia slid to 68th position from 48th. Democracy in Indonesia suffered a setback following the mayoral polls in Jakarta, the capital, in which the incumbent governor, Basuki Tjahaja Purnama (known as Ahok), who comes from a minority community, was arrested for alleged blasphemy. Indonesia’s stringent blasphemy law has often been used to limit freedom of expression.” (The Economist, 2017).

Jakarta was one of the districts that held regional election in the second joint election in Indonesia as governed under Article 201 (2) of Law 10/16. Different from the use of money politics, an election based on identity will only hurt the societal unity in a country and eventually lead to fragmentism in a state. As an example, following the end of World War II, south Asia was divided into India and Pakistan solely based on cultural identity and religion, while also involving massive human mobilization, ethnic cleansing, and even genocide (Wiarda, 2014; Brass, 2003). Following the fall of the Soviet Union, Southeast Asia or otherwise known as Yugoslavia – an artificial state brought together by Josip Tito and oppression too met its downfall. Thus, it is reasonable to conclude that division based on cultural identity, religion, and ethnicity always ends up badly. This also includes the one in Balkan, namely Christian vs. Islam, South Slavs vs. North Slavs, Catholic vs. Orthodox, Roman Alphabet vs. Cyrillic Alphabet. In the early 1990s, such disputes led to a bloody conflict, war, ethnic cleansing, and even genocide (Mojzes, 2011).

As edited by Sujit Choudry dan Nathan Hume, Donald Horowitz, a constitutional design should effectively respond to the rise of ethnicity that causes political gap. Furthermore:

“In politics defined by their ethnic divisions, political competition occurs among ethnic parties and within ethnic groups, who outbid each other and push politics toward extremism... Overarching goal is to design constitutions to create incentives for inter-ethnic cooperation, by empowering ethnic moderates over ethnic radicals. The key is to ‘make moderation pay’. His principal focus has been the electoral system. The mechanism for rewarding moderation is the transfer of votes across ethnic lines as ‘vote pooling’ and for which the key mechanism is the alternative vote. The alternative vote makes moderation pay because it rewards ethnic parties that appeal across ethnic lines and should offset electoral losses from intra-ethnic competition on the extremes.” (Ginsburg & Dixon, 2011).

Indonesia’s constitutional design acknowledges the society’s inherent diversity is clearly embodied in Article 28I (3) of UUD NRI 1945 which stipulates that “Identitas budaya dan hak masyarakat tradisional dihormati selaras dengan perkembangan zaman dan peradaban”. Looking back on history, Article 32 of the original constitution only stated that “Pemerintah memajukan kebudayaan nasional Indonesia”, this vague formulation was then changed to two provisions both of which emphasizes the guarantees provided by the state of both the right to preserve culture and also to respect local languages as part of national culture. Of course, this concept is in contrast with the notion of identity politics which deliberately fuels discrimination based on identity through the *struggle for recognition*. Consequently, such notion translates to a *struggle for power* merely to guarantee that a social group’s interests are not overridden.

Even after all that, there are still ways to make up for the societal fragmentation caused by *identity politics*, namely by changing the very core of the constitutional design in accordance with mechanism like Lijphart’s *power sharing* idea or Horowitz’s “division of power” election model. While the choices are left to be decided by *soft power*, this will in turn trigger a wave of tolerance and massive nationalism to glue the long-fragmented society. To give a concrete example, Presidential Decree No. 24 Year 2016 promoted the catchphrase “Saya Indonesia, Saya Pancasila” and the government even formed Badan Pembinaan Ideologi Pancasila in accordance with Presidential Regulation No. 54 Year 2017. Vedi Hadiz considers these steps as “a way back to the New Order’s discourse encapsulated through the idea of Pancasila and an integralistic state, both of which remain as a hyper-nationalism” (Hadiz, 2017). Even so, the Author nevertheless considers that revitalization of national values should be done in a carefully planned manner. The rationale thereof is because Henk Schulte Nordholt noted that following the reformation era, the ideology of Pancasila has lost

the authority in its hegemony and was even countered by a wave of identity politics in relation to religion, ethnicity, and origins. The reality clearly indicates that democratization and decentralization in a reformed Indonesia ironically created electorate groups (constituency) that are driven by fragmented identity.

“When the authoritarian New Order regime fell apart, the state ideology, *Pancasila*, lost its near hegemonic authority and was challenged by a wave of religious, ethnic and regional identity politics. Because of democratization and decentralization, *Reformasi* intensified and accelerated these fragmented identities, which served as a means to mobilize new constituencies. The main victim of this process was, so it seemed, a shared sense of Indonesian citizenship.” (Nordholt, 2008).

In light of the aforementioned findings, it can be concluded that the strategy to win politic contestation by using identity politics will remain popular and will cause an even more massive destruction when its usage is made more efficient (“Habib Rizieq Serukan Politik Identitas Berketuhanan,” 2018). One of the reasons is because several societal components claim that even up until now the government is yet to clearly regulate the negative impact of identity politics in political contestation especially in local executive election. Legally, matters regarding *identity politics* are only briefly governed under Article 280 (1) c of Law No. 7 Year 2017 on General Election and Article 69 (1) c of General Election’s Commission Rule No. 23 Year 2018 on General Election that “*menghina seseorang, agama, suku, ras, golongan, calon, dan/atau Peserta Pemilu yang lain.*” Komisi Pemilihan Umum [“KPU”] did not even revise nor in any way address the vague rules in Law No. 7 Year 2017, despite the sporadic use of *identity politics* to negatively impact the result of election even before the campaign period begins.

Based on the aforementioned elaboration, the Author will seek to elucidate how Indonesia’s constitutional design should be regulating the existing notion of *identity politics* in local executive election as opposed to leaving it in unattended vacuum and thus subjecting the society to an impaired democracy.

METHOD

Generally, this paper is a normative legal research relying on literature. Based on the research questions however, this paper utilizes both the *descriptive* and *instrumental* approach. The descriptive approach is evident in how this paper elaborates the emergence, development, and arrangement of *identity politics* in local executive election in Indonesia. Whereas, the instrumental approach is used in proposing an ideal constitutional design to address *identity politics* after making comparisons with the legal and factual circumstances in multiple countries.

In this study, the author does not utilize all the known research approaches, but rather focuses only on the use of legal approaches, legal history and comparative approaches. The data collection is done by conducting document study, legal literature research, and in-depth interviews – all of which classify as secondary data, normally used in normative juridical research.

FINDINGS

If we were to look back on the history of local politics following the constitutional reform, *identity politics* remains as an inseparable part of the society, as can be seen in how issues of religion continues to emerge in South Sumatera, West Java, and Central Java. For instance, in the 2010 mayor election in Medan, *identity politics* were apparent since the two candidates came from different identity backgrounds: Sofyan Tan, a Catholic of Chinese descent was going against Rahudman Harahap, a Muslim of Batak Mandailing ethnicity.

“Local newspapers (especially *Waspada*) really focused on spreading how the candidates strategized their campaigns to revolve around issues of religion and ethnicity. In fact, local religious leaders in Jakarta too made written campaign to support the candidate that they were associated with.” (Simanjuntak, 2010). The use of *identity politics* based on religion happened again during the 2018 South Sumatera regional election, where candidate #1 Edy Rahmayadi-Musa Rajekshah (Eramas) was deemed to have used his identity to go against Djarot Syaiful Hidayat-Sihar Sitorus (Djoss). As a result, Eramas won the Muslim dominated regions like Deli Serdang, Medan, Binjai, and regions in the eastern coast. Surprisingly however, Musa Rajekshah, a candidate suspected of corruption, did not show any support for Djoss. This serves as a concrete proof that issues of *identity politics* are much more selling than that of money politics (“Politik identitas ramai di Pilgub Sumatera Utara, isu korupsi jadi terabaikan?”, 2018).

Other than in South Sumatera, issues of *identity politics* were also used in 2013 West Java’s regional election where Rieke Dyah Pitaloka, a governor candidate from PDI-P Perjuangan, was slandered by accusations of being an anti-religion communist. Meanwhile, in late 2017, the preparation for the third joint regional head election was tainted with issues of culture (sunda wiwitan) and religion (wahabi and syiah), ironically even before the governor election that will be held next year. Purwakarta’s Mayor, Dedi Mulyadi, who was a candidate for Vice Governor in West Java’s regional election even had to arrange *tabayun* regarding the common accusations of himself being a sunda wiwitan as opposed to a Muslim (“Dedi Mulyadi Jawab Pertanyaan Sunda Wiwitan sampai Nyi Roro Kidul,” 2017). Not only that, Ridwan Kamil who ended up winning West Java’s 2018 election was once accused of following the Syiah religion (Syiah & Ridwan Kamil Marah dan akan Mengadu ke Polisi,” 2017).

Local politics in Central Java too have remained successful despite being tainted by *identity politics* on multiple occasions, including in the 2017 Banjarnegara mayor election and the 2015 Solo mayor election: Budhi Suwarno, or Wing Chin, who was a Chinese descent was elected as Banjarnegaran mayor and FX Hadi Rudyatmo was nevertheless re-elected as a Mayor. Interestingly, the votes for PDI-Perjuangan in Solo drastically dropped following the election, despite usually retaining a significant majority. In 2010, together with Joko Widodo, FX Hadi Rudyatmo received a clear win with 90,09% votes in favor of him, which is a contrast to the numbers in 2015 whereby he only received 60,40% of the votes. This phenomenon could be attributed to SARA (suku, agama, ras, dan antar golongan/tribes, religion, race, and other classification) issues brought forward by his competitor (Meleset & Menang, 2015).

Variably from the three aforementioned provinces, gender-based *identity politics* was an integral part of 2018 East Java governor election. The 2018 election was Khofifa Indar Parawansa’s third attempt to retain governance. She failed to do so in 2008 and 2013 as there were strong controversies regarding whether or not women were entitled to be a Muslim leader (“Pilgub Jatim "Pertarungan" Kader NU,” 2008). It was exactly this issue that was held against Megawati in the 2004 presidential election (“Kiai NU Jatim Menolak Presiden Wanita,” 2004).

The research conducted by Bawaslu in 6 provinces from 8th-9th June 2017 concluded that societal structure in Indonesia will inevitably lead to the use of *identity politics* by political actors. Yet, all the stake holders invited in the focus group discussion reached the consensus that the use of *identity politics* in election is not a wise decision (Jurnal Bawaslu 3 (2), 2017). The fundamental rationale is simple: identity is a God – gifted property, that should never be utilized as means to gain power let alone to fuel hatred amongst each other.

DISCUSSION

The normative provisions contained in the constitution should be a reflection of the daily reality of the political behavior of its citizens (Asshiddiqie, 2017). The Indonesian constitution, the word "identity" is only explicitly mentioned in Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Even so, the aforementioned provision is not directly related to identity politics in the contestation as referred to in this paper. Meanwhile, in several other countries such as Lebanon, Singapore, Malaysia and others, the regulation of identity politics is common. The absence of good regulations in managing identity politics is seen as a result of the political stage that is saturated with pragmatic, flexible, and even opportunistic characteristics, or it can be said that it is simply a "political deal, not the political dream" (Aspinall, 2011). The constitutional design for a country whose community has a very diverse social diversity should provide space for identity politics which is not only beneficial for minorities.

Constitutional design in societies has in the past been implemented through a *power sharing* paradigm, even in the 1960s democracy e.g., Canada, Colombia, Cyprus, India, Lebanon, Malaysia, Holland and Swiss (Lijphart, 2004). In fact, Article 57 of Ecuador's 2008 constitution as amended in 2015 states that indigenous communities shall be freed from taxes. Assessing the trend globally, there are as many as 49 constitutions world-wide that guarantee minorities' rights to be involved in governance and societal constructs, even to the extent of prohibiting forced assimilation for the purpose of depleting the population of specific ethnicity (Montenegro and Serbian Constitution).

Article 19B paragraph (1) of the Singapore Constitution states that "An election for the office of President is reserved for a community if no person belonging to *that community* has held the office of President for any of the 5 most recent terms of office of the President," referring to Malay, Indian, and Chinese community. This provision is widely seen as a success following the concept of *identity politics* in other two communities (India and Malay), where *Reserved Election Mechanism* (REM) enabled justice to guarantee minorities' involvement in the government. At the end of the day, this rule enables each community to be in charge of *the highest office*. The reason why the 2017 Singaporean election used the REM system is because it has been over five years since the country had a Malay descent for President. This is a radical policy that might fragment the society if applied in other states, however REM allows each community to have its members as President at least once every 30 years. This way, there is a guaranteed representation of all members of the three community in Singapore ("How Singapore elected a president without a vote," 2017). Eventually, this ensures that multiculturalism is preserved (Yim, 2017).

Quite comparable to Singapore, Malaysian constitution also regulates a privilege for existing ethnic groups. If assessed at face value this might lead to injustice, however this regulation is fundamentally intended to create a social justice for every citizen of the state. As such Article 153 of Malaysian Constitution which claimed that "*Reservation of Quotas in Respect of Services, Permits, etc. for Malays and Natives of any of the states of Sabah and Sarawak*" should be seen as comparable with its Article 8, "*All persons are equal before the law and entitled to the equal protection of the law*". In Shad Saleem Faruqi's note, it was mentioned that:

"In recognition of the fact that Malaya was historically the land of the Malays, the Merdeka Constitution incorporated a number of features indigenous to the Malay archipelago. These include the Malay Sultanate; Islam as the religion of the Federation; syariah laws and syariah courts; a "special position" for the Malays and (in 1963) the natives of Sabah and Sarawak; Malay reserve lands; Bahasa Melayu as the official language; protection for customary laws of the Malays and (since 1963) the natives of

Sabah and Sarawak; weightage for rural areas (which are predominantly Malay) in the drawing up of electoral boundaries; and legal restrictions on preaching of any faith to Muslims”. (“Race relations and the Federal Constitution,” 2015)

That being said, there are still necessary safeguards for the other ethnic groups, amongst others a guaranteed right to vote and be voted in political process.

In the Lebanese constitutional design, the National Pact 1943 (al-Mithaq al-Watani) mandates that the chair of Presidency is given to Christian Maronite, Head of Parliament is given to Syiah Moslem, Prime Minister is given to Sunni Moslem, while Vice Prime Minister and Vice Head of Parliament are given to Greek Christian Orthodox, and Commander of Army is granted to Druze. The fact is, despite having undergone several amendments (1989 Taif Agreement that derogates President’s rights and 2008 Doha Accord), consociational democracy retains its position.

In light of the aforementioned, it can be concluded that the constitution does not solely concern matters of national identity but also gives room for *identity politics* to continue to grow as one of the pillars of a constitutional state. The concept that *justice is different from equality* should also be seen in the context of present day societal concern. As such Article 28(H) paragraph (2) of UUD NRI 1945 which stated “*Setiap orang berhak mendapat kemudahan dan perlakuan khusus untuk memperoleh kesempatan dan manfaat yang sama guna mencapai persamaan dan keadilan*” too can be seen as an opportunity for *identity politics* to grow in line with communal interest as a way to promote justice. Unfortunately, the rule does not specify to whom the favorable treatment should be given. Thus, after assessing the currently fragmented society, it is the Author’s recommendation that there needs to be a significant change in our constitution to prevent conflicts caused by identity. Although Aspinall (2011) mentions that *identity politics* only culminate at the local level and can be handled with a network of cross-identity cooperation (p. 303), the issue has now threatened the foundation of Pancasila (Kompas.com, 17 Juli 2018). Thus, to ensure a contestation of idea and not merely identity in the political stage, *identity politics* should be governed similar to the aforementioned examples.

Identity politics is not necessarily synonymous with something negative. Several sources said that Pancasila interpreted the phenomenon of the identity politics in a neutral manner. This means that identity politics can be something good or something bad. Introducing oppression and fighting for justice by using identity politics for marginalized identity groups can be seen as something good. Women fighting for special treatment, especially in access to constitutional power, can of course be interpreted positively. However, the use of identity politics that leads to hate speech and causes the disintegration of the nation is something negative. The nation's motto of *Bhinneka Tunggal Ika* means that diversity is not merged into oneness, but unity creates a place of dignity for each group of different identities.

Through the essence of Pancasila and *Bhinneka Tunggal Ika*, the ideal constitutional design to deal with the phenomenon of identity politics is what the author calls a dignified balance constitution (*evenwicht waardigheid*). A concept developed from a dignified justice philosophy. (Kameo & Prasetyo, 2021). Constitutional law scholars divide the constitutional design in a dichotomous manner between flexible and rigid. However, the current development of existing designs is not entirely in between these two forms. Dixon and Landau calls the development of the existing constitutional design the Tiered Constitution (Dixon & Landau, 2018), which seeks to reach a balance of the two existing forms. In addition, in managing a divided society, Choudry divides it into two forms, namely accommodative or integrative (Choudry, 2008). However, the ideal constitutional design still seeks a balance between the two options. Starting from this thought, the ideal constitutional

design specifically dealing with the phenomenon of identity politics must be at a balance point and adjusted to the needs and maturity of a country's legal politics.

The design of a dignified balance constitution has the characteristics of harmony, humanizes humans, incremental, and resilient. First, the harmony approach is a pattern adopted by Pancasila which means that various identity groups are accepted and given a place in under the "big tree" of Pancasila as long as these identities do not carry out violent actions with the aim of eliminating diversity.

Second, humanizing humans means that the constitutional design must be able to dignify or glorify each identity in its place. This is the answer to the desire of every human being who throughout his life seeks recognition (struggle for recognition/*kampf um anerkennung*) or recognition as a demand for *thymos* (anger/pride-anger/pride (θυμοειδής)) the third element of humans besides eros-desire (ἐπιθυμητικόν) and logos-reason (λογιστικόν) (Fukuyama, 2018) is glorified and dignified by Pancasila.

Third, the ideal constitutional design puts forward constructive political agreements or compromises. Various issues in the constitution are resolved by deliberation and consensus and if no agreement is found, it ends with a 'dilatatory compromises' approach (Schmitt, 2008). This approach is seen as part of an incrementalistic strategy in shaping the constitution (Landau & Lerner, 2019). Although the redaction of norms in the constitution is considered to cause ambiguity and even contradictions between principles, (Horowitz, 2021) the choice to regulate thoroughly in the legislation under it must be seen something that is in accordance with the characteristics of harmony.

Fourth, resilience or constitutional resilience is defined as the ability to survive or endure tough times while maintaining the identity and values mandated by it and enabling the rule of law and democracy to demonstrate resilience as well. (Contiades & Fotiadou, 2015). The resilience of the constitution does not only mean endurance but also the ability to be flexible, adapt and innovate in the face of all the pressures of the times while still upholding the main purpose of its values it. Constitutional resilience has nothing to do with time. A long-lasting constitution is the meaning of constitutional endurance. Meanwhile, constitutional resilience is the ability to hold or fulfill the main values or principles under the stress of a severe crisis. (Contiades & Fotiadou, 2021) Therefore, one of the important factors in constitutional resilience is that constitutional actors, especially the constitutional court, must be able to act carefully in the midst of political pressure, in what Richard Albert calls "political but not politicized court" (Albert, 2018). In the context of identity politics of filling local executive positions, the design of the Indonesian constitution must be able to hold the core principles of values that are the ideals of law, namely Pancasila. Each identity group is given a place and is dignified or glorified with a discourse that prioritizes the integrity of the nation with an incremental strategy.

One of the important points that must be adjusted so that the Indonesian constitution, the 1945 Constitution of the Republic of Indonesia, becomes a constitution with a dignified balance design, is the design for filling the positions of regional heads. Indonesia applies two forms of decentralization, namely symmetrical (Law No. 23 of 2014 concerning Regional Government) and asymmetrical (Law No. 21 of 2001 concerning Special Autonomy for Papua Province along with its amendments, Law No. 11 of 2006 concerning Aceh Government, Law No. 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia, Law No. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta). Starting from the legal political design of the regional government, the effort to unify the pattern of filling the positions of regional heads throughout Indonesia with Law No. 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws and their latest

amendments with Law No. 6 of 2020, denying the differences and diversity of local politics. Mechanisms of direct and indirect elections need to be a joint discourse again. The choice of asymmetric regional head elections is more appropriate with a dignified balance constitutional design. Constitutional provisions such as those in Article 62 of the Constitution of the Republic of Kosovo can be adapted to the Indonesian constitution by instituting the post of deputy regional head according to local political needs. So that each autonomous region can have an unequal number of deputy regional heads. This ensures that marginalized identity groups can be represented not only in the Regional People's Representative Council (DPRD) but also in the realm of local executive power. The challenge to determine the marginalized identity group must be measured objectively with a minimum variable of Education and the economy by related institutions that work together such as BPS, Ministry of Home Affairs, and KPU.

CONCLUSION

To ensure a legal certainty in local political contestation, the use of identity politics is legally recognized by giving recognition to marginalized identity groups. The ideal constitutional design is a dignified balance constitution that glorifies every entity, including the identity of marginalized groups. With the asymmetric filling mechanism for local executive positions, the identity of these marginalized groups can be dignified or glorified.

REFERENCES

- Daron, A., & Robinson, J. (2012). *Why nations fail: The origins of power, prosperity, and poverty*, Crown Publishers.
- Jimly, A. (2007). *Principles of Indonesian constitutional law post-reformation*. Jakarta: Bhuana Ilmu Populer.
- Seyla, B. (2002). *The claims of culture: Equality and diversity in the global era*. Princeton: Princeton University Press.
- Larry dan Marc F. Plattner, D. (2015). *Democracy in decline?*. Baltimore: John Hopkins University Press.
- Edward, F., & Nooruddin, I. (2015). *Election in hard times: Building stronger democracies in the 21st century*. New York: Cambridge University Press.
- Dixon, G. (2011). *Comparative constitutional law*. Northampton: Edward Elgar.
- Ran, H. (2010). *Constitutional theocracy*. Cambridge: Harvard University Press.
- Samuel, P. (2005). *Who are We?: America's Great Debate*. London: Simon and Schuster.
- Jakala, Michaelina, Durukan Kuzu dan Matt Qvortrup. (2018). *Consociationalism and Power-Sharing in Europe: Arend Lijphart's Theory of Political Accommodation*. Coventry: Palgrave Macmillan,.
- Steven, L., & Way, L. (2010). *Competitive authoritarianism: Hybrid Regimes After the Cold War*. New York: Cambridge University Press.
- Jan, M. (2000). *What is populism?*. Philadelphia: University of Pennsylvania Press.
- Paul, M. (2011). *Balkan Genocide: Holocaust and ethnic cleansing in the Twentieth Century*. New York: Rowman & Littlefield Publishers.
- David van, R. (2016). *Against election: The case for democracy*. London: The Bodley Head.
- John, R. (1999). *A theory of justice*. Cambridge: Harvard University Press.
- Antonius, S. (2010). *Regional autonomy, ethnonationalism, and Indonesia's Future: What Percent of the Land and Water of the Archipelago Is Owned by the People?* Jakarta: Indonesian Torch Library Foundation.
- Ronald, F., & Norris, P. (2016). *Trump, Brexit, and the rise of populism: Economic have-nots and cultural backlash*. Faculty Research Working Paper Series Harvard Kennedy School.
- Nordholt, H. (2008). "Identity politics, citizenship and the soft state in Indonesia; an Essay," *Journal of Indonesian Social Sciences and Humanities*, 1.
- Jessica, K. (2009). "From identity politics to ideology politics," *Utah Law Review*, 3.
- Richard, D. (2005). "Five theses on identity politics," *Harvard Journal of Law & Public Policy*, 29(1).
- Bawaslu, J. (2017). 3(2).
- Yim, S. (2017). "The reserved election mechanism: A step in the right direction for promoting multiracialism and protecting minority rights?" *Juris*.

