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**THE ANALYSIS OF INDONESIAN INTENTION TO JOIN TRANS-PACIFIC
PARTNERSHIP BASED ON THE PRINCIPLES OF DEMOCRATIC
ECONOMY SYSTEM**

Zainal, I. & Fitriyanti, F.***

Abstract:

Presiden Jokowi's intention to join Trans-Pacific Partnership (TPP) is becoming a long polemic up to now. The opposing group against the issues by delivering several negative arguments, while the supporter standing with the benefits. The article aims to elaborate the possibility of Indonesia to involve in the TPP in the perspective of national economic system. By using a doctrinal method, it can be concluded as follows; *firstly*; the President is not forbid to enter into international agreement. *Secondly*, according to the Article 11 of 1945 Constitution, to enter into the international agreement, President should have an approval from the Parliament. *Thirdly*; the President is allowed to do the international agreement, including the TPP, if the content of agreement is accordance with the Principles of Democratic Economy system as stated on the Article 23 Paragraph (1), Article 27 Paragraph (2), Article 28 C Paragraph (1), 28H Paragraph (1), Article 31, Article 33 and Article 34 of the 1945 Constitution. Basically, the idea to join TPP can be proceeded by the Government of Republic Indonesia, however President Jokowi needs to do several requirement beforehand. The first requirement is related to the ratification of agreement by the President which requires the approval from Parliament of Indonesia, since the impact of the agreement will affect the national economic sector. The second is the President should review again the document of TPP, comprehensively. Whether or not the agreement trade deal is contradict with the Indonesian economic system as stated in the Constitution. The third, President also needs to hear the opinion of experts and other sources, especially from the resisting groups. Last of all, President should

* Ph.D Student at the Faculty of Law, Universitas Negeri Sebelas Maret Surakarta, Researcher, International Centre for Law and Sharia Studies, Faculty of Law, Universitas Muhammadiyah Yogyakarta, Ring Road Barat, Tamantirto, Kasihan, Yogyakarta, Indonesia, Email: istianahzainal@yahoo.com

** Ph.D Student at the Faculty of Law, Universitas Gadjah Mada Yogyakarta, Researcher, International Centre for Law and Sharia Studies, Faculty of Law, Universitas Muhammadiyah Yogyakarta, Ring Road Barat, Tamantirto, Kasihan, Yogyakarta, Indonesia, Email: yantifadia@yahoo.com

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guarantee and make the people believe that the ratification of the TPP will be not negatively impacted the Indonesian economic situation.

Keywords: Trans-Pacific Partnership, Indonesian Economic System, 1945 Constitution.

1. Preliminary Background

Into the third millennium, the world has changed rapidly, it creates complex implication, namely the emergence of interdependence among nation-states in almost all dimensions of life. The rapid change as mentioned above is so-called as globalization.¹

In economic sector, globalization impact on free movement of goods and services among states around the world and will minimize the protection or monopolistic within a country. However, in facing globalization is a necessity due to shy away from globalization in the present times is an impossibility.

Economic globalization is defined as an economic life in an open and globally, regardless of territorial boundaries between country to country. Economic globalization is closely related to free trade, or in economic globalization, free trade tries to create wider trading area and to eliminate barriers that lead to international trade which is not running smoothly.

In facing economic globalization era, each state will pursue a variety of the best way, so that the state is able to achieve much benefit in trying to improve the welfare of its citizens, and instead of trying to suppress a bit loss, even if it is able, it totally eliminates the negative impact, by establishing various forms of economic cooperation with other states.

Similarly, Indonesia, economic globalization has also been motivated Indonesia to compete grabbing foreign trade market, especially for marketing agricultural products, marine products, textile products, minerals, and other excellent products of Indonesia. To obtain optimal results in the economic field, Indonesia has established cooperation with some other states, such as bilateral cooperation in the Joint Task Force on Economic Cooperation

¹ Budi Winarno, *Pertarungan Negara Versus Pasar*, Media Pressindo Yogyakarta, 2008, P. 16.

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(JTF-EC), and several regional cooperations such as APEC, AFTA, ASEAN, GATT/WTO, and others.

At the moment, Indonesia was planning to participate in economic cooperation of Trans-Pacific Partnership (TPP). The discourse that Indonesia wants to join the Trans-Pacific Partnership has been stated by President Jokowi in his meeting with US President Barack Obama, at the White House Washington, DC, November 26, 2015.

The two main reasons that pushed President Jokowi stated his desire to join the free trade agreements in the Pacific region, namely first that the Indonesian economy is an economy that is open, so that Indonesia can establish economic cooperation with any country, and secondly, Indonesia with a population of 250 million people is the country with the largest economy in Southeast Asia. Of course, the statement by President Jokowi welcomed by President Obama, even International media, New York Times and The Guardian mentioned it as the victory of President Obama embracing an important ally in the Pacific region to balance the economic competition of the United States with China.

Indonesia is claimed to be an important ally, because this country has the economy of US\$ 1 trillion, let alone Indonesia also included a group of 20 (G-20), the community of the major economies in the world.

However, a statement by President Jokowi joining the TPP has surprised many people, because the attitude of Jokowi previously considered less likely to join the Trans-Pacific Partnership. The attitude in question can be seen from the assertion of Jokowi while attending a high-level meeting of the leaders of APEC (Asia Pacific Economic Cooperation) in Beijing in mid-November, 2014. It was Jokowi said that Indonesia did not want to just be a mere market for the economic interests of large countries, such as America and China. In the meeting, President Jokowi asserted that Indonesia is not willing to join the Trans-Pacific Partnership (TPP) or the Free Trade Area of the Asia-Pacific (FTAAP), until the economic integration from both provide great benefits and real for Indonesia.

In connection with the above explanation, the idea of Jokowi to join TPP gets a mixed response from various elements of society in Indonesia. In terms of procedure, for example, Jokowi is considered to violate the rules of the country because it has to convey the

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idea that will likely have a big impact on the Indonesian economy without communicating with the legislative first. Then from the content, President Jokowi also considered inconsistent, impetuous in taking decisions, because before the statement was disclosed, Indonesia has never been reviewing about the Trans-Pacific Partnership comprehensively and deeply.

A different attitude, namely a positive response that was also presented by some people, who think that joining Indonesia into the Trans-Pacific Partnership will provide great benefits for improving the welfare and prosperity of the people of Indonesia.

Polemics about whether or not Indonesia joins the TPP continues to roll until today and become a very interesting issue for discussion. All the pros and cons raised, of course guided by good faith and a form of public awareness of the progress of the nation and the country. Nonetheless, criticism, rejection or support to the Government's policy, should be accompanied by arguments referring to the foundation of the state Constitution, so that the entries submitted are not subjective, but is based on clear benchmarks and can be answered.

Problem Formulation

Based on the above explanation, the problems that need to be addressed in this paper is: How do the views of the National Economic System of the discourse for Indonesia join into the Trans-Pacific Partnership?

Theoretical Basis

The theory used in this paper is the theory of authority, combined with the theory of *stufenbau* by Hans Kelsen. The authority is essentially a power given to state equipment to run the government². In running the government, basically President Jokowi has the authority to establish cooperation with any country that is seen to improve the welfare of the nation. However, based on the theory of *stufenbau*, policies issued by President Jokowi must not conflict with the state Constitution, namely 1945 Constitution, which was hierarchically in a higher position.

² Salim Hs, Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, PT RajaGrafindo Persada, Jakarta, 2013, P. 186.

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Writing Method

This paper writing is using doctrinal approach, namely by reviewing the literature related to the themes and a variety of laws and regulations as well as the print and electronic media that support the substance of writing.

2. An overview of the Trans-Pacific Partnership

Trans-Pacific Partnership, which in Indonesian translated into *Kemitraan Trans Pasifik*, and discussed hereinafter abbreviated as TPP is a trade pact between the countries in Asia Pacific, whose members include 12 countries, namely the United States, Japan, Brunei, Chile, New Zealand, Singapore, Australia, Canada, Malaysia, Mexico, Peru, and Vietnam. TPP has been agreed by the 12 member states in Atlanta, Georgia, on October 5, 2015. 12 countries that joined the TPP must represent about 40 % of Gross Domestic Product (GDP). Although TPP agreed by 12 countries, but the charge of TPP agreement does not automatically could be implemented by the agreed countries. The reason for the realization of the agreed content, still required ratification by each of the participating countries, to comply with the regulation of participating countries in the provisions of TPP.

Unfortunately, the TPP negotiation process takes place very closed. TPP documents and details of the deal were never made public. Even based on the recognition of members of the US Senate, Ron Wyden, a majority of members of the US Congress could not access documents TPP negotiations. Instead of 600 representatives of corporations like Halliburton, Chevron, PhRMA (Pharmaceutical Research and Manufactures of America), Comcast, and Mitton Picture Association of America are free to access and give input to the TPP negotiation process. Luckily, *WikiLeaks* managed to divulge some content that is agreed upon in the TPP³.

Confidentiality agreement of TPP has drawn sharp international criticism, besides the maneuvers are not uncommon in this era of globalization, lack of transparency is also inviting the presumption of the existence of a hidden agenda of the United States, and does not provide legal certainty to the citizens of the member countries.

³ <http://www.BerdikariOnline.com>, Accessed on October 31, 2015, at 7.15 p.m.

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Based on the information released by WikiLeaks, it is known that the final outcome of TPP negotiations agreed on several issues related to eliminating trade barriers in a wide range of products, including agriculture, dairy products, industrial new car, the latest technology, medicine advanced and a number of other products, as well as adjustments in regulations environment and regulations concerning employment.

TPP also regulates intellectual property rights, the privatization of public services, deregulation of all the rules that hinder investment and the free circulation of goods and services and requires member states to privatize state enterprises. In the TPP scheme, the investor may bring an action to TPP member countries to the Court. Therefore, TPP is equipped with Investor State Dispute Settlement (ISDS). ISDS is an international legal instrument in which investors can file a lawsuit against the government of a country if investors judge that the relevant government policies discourage the investment of TPP member countries.

Based on the contents of the agreement, the TPP would force member states to do the following; First, TPP member countries must dismantle all tax rules and rules of export/import impede entry and exit of goods/services. It has been disclosed by the United States, that there are at least 18000 tax rules in the 11-member of TPP which will be demolished to facilitate the entry of US goods⁴. Secondly, member states should eliminate 98 % rate for a variety of products, such as milk, meat, sugar, rice, horticultural products, sea food, manufactured products, natural resources and energy. Third, TPP member countries had to eliminate all policies that seek to protect domestic products, including a ban of campaigns on buying local products.

US trade representatives, Mickael Froman, as quoted by Reuters news agency, said that Indonesia must abolish import tariffs on goods products of TPP member countries if Indonesia wants to join the free trade bloc. Further, according to Mickael Froman, Indonesia also have to abolish a number of barriers, such as the existence of local content requirements on foreign products⁵.

⁴ *Ibid*

⁵ www.bbc.com, Accessed on October 6, 2015, at 8.54 p.m.

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Fourth, the TPP member countries are required to open all sectors of its economy to foreign investors, including public services such as education and health, and the need for public goods such as electricity, water and others. Fifth, the TPP member countries required to abolish the privileges of State Own Enterprises (SOEs) and treated the same as private companies. Sixth, TPP member countries also have to deregulate all the rules that hinder or impede the freedom of investment, including eliminating rules that protect the rights of local workers, and protection of the environment.

Seventh, the TPP member countries must also conduct the privatization of the health care sector. Intellectual Property Rights (IPR) protection is given through TPP, large medicine companies would be free to determine the price of medicines to maximize their profits and limit access to the circulation of generic medicines. Eighth, the TPP member states must also be prepared receiving complaints of foreign investors, because investors were given the authority to conduct a lawsuit against the state through the ISDS, if the policy of the concerned country impeded the investment of TPP member countries.

In another perspective, TPP agreement also has a positive impact that needs to be taken into consideration. When viewed from the interests of consumers, in fact, suppression of import taxes on free trade will give benefit namely the cheaper price of a products with more varied product selection and better product quality. Then for domestic producers that has good competitiveness, acquisition cost of export had a positive impact for the expansion of overseas markets and minimize the cost of marketing the product, then the acquisition cost of imports will also be useful to relieve producers in obtaining raw materials that is needed with cheaper price, so that the cheapening of raw materials can minimize production costs.

3. The national economic system

The economic system is a system to regulate and establish economic relations between people with a set of institutions in an order of life. An economic system is composed of elements of the human as a subject, economic goods as objects, as well as the institutional set up and interweaving in economic activities. Institutional devices shall include economic institutions (formal and informal), how to work, relations mechanisms, laws and regulations

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of the economy, as well as the rules and other norms (written or unwritten) that have been selected and accepted or determined by the community in concerned place order of life⁶.

National economic system is the economic system that is currently applied to the state of Indonesia as stipulated and specified in the Constitution, namely the 1945 Constitution.

According to Article 33 of the 1945 Constitution, Indonesian economic system is called as the system of economic democracy. Article 33 of the 1945 Constitution which consists of five verses affirms that:

- i. The economy is structured as a joint venture based on family principles.
- ii. Production branches which are important for the country and dominate the life of the people controlled by the state.
- iii. Earth, water and natural resources contained in it are controlled by the state and used for the greatest prosperity of the people.
- iv. The national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability and environmental insight, independence and by keeping a balance between progress and unity of national economy.
- v. Further provisions on the implementation of this article are regulated by law.

The provisions in Article 33, as already stated above, Paragraph (1), (2) and (3) is the original script before the amendment, while paragraph (4) and (5) are the result of the fourth amendment. Thus, according to Jimly Asshiddiqie, the “economic ideology or democracy based economy adopted by the founders of the nation, continue to hold onto, with additions required to promote the general welfare, as aspired to in the fourth Paragraph of the Preamble of 1945 Constitution⁷.

Asshiddiqie further revealed that the Article 33 of the 1945 Constitution, there are a number of important things that need to be explained, namely, first, the statement “The economy is structured as a joint venture based on family principles”. According to Asshiddiqie, the statement can be viewed from three aspects, namely the definition of micro, macro understanding and joint ventures as a principle.

⁶ Dumairy, *Perekonomian Indonesia*, Penerbit Erlangga, Jakarta, 1996, P. 30.

⁷ Jimly Asshiddiqie, *Konstitusi Ekonomi*, Penerbit Kompas, Jakarta, 2010, P. 268.

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According to him, in the sense of a micro or small, with the understanding of the joint company, it can be attributed to the cooperative as a form of joint ventures. However, if the micro sense is used, then there will be confusion about the contents of the verse, because it seems the overall arrangement of the Indonesian economy is identical with the cooperative as a form of joint ventures. Because it was better to look at it from in the macro side or the wider sense, ie the context of a systematic arrangement of the Indonesian economy as mentioned above.

It is therefore, Widjojo Nitisastro interpretation was very precise which states that “the economy is structured as a joint venture is no more point to the notion of the national economic system as a joint venture of all elements of the Indonesian people. The understanding of this togetherness, not only with regard to the concept of enterprise, but is furthermore associated with the concept of economic actors who are not only executed by the wake-up company⁸.

Second, the words “principle of the family”, this statement refers to understanding of the spirit of togetherness, spirit of mutual cooperation, and cooperation. According to Asshiddiqie, the weakness of this paragraph is that if the important thing is cooperation, not competition. Whereas, in the era of globalization and free trade, something needs to be established in addition to cooperation is also competition. If Indonesia wants to excel at the regional or global trade economy, Indonesia should be able to compete with other countries, and in the same time also cooperates with other countries. Cooperation can be in a variety of ways, such as in trade, investment, production or cooperation in technology development⁹.

Third, in Paragraph (2) of Article 33, there is a phrase “controlled by the state”, according to Asshiddiqie, the sense of the sentence is mastery in a broad sense, which includes the notion of ownership in the sense of the public and civil, including the power to control and to manage the business field directly by the Government and government officers who are burdened with the specific task. Therefore, owner of sectors or branches of

⁸ Tulus TH. Tambunan, *Perekonomian Indonesia, Kajian Teoritis dan Analisis Empiris*, Ghalia Indonesia, 2012, P. 8.

⁹ Jimly Asshiddiqie, *Op Cit*, P. 270.

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production that are important for the state and lives of many people should be the Government¹⁰.

Fourth, in Paragraph (4) of Article 33, there are several concepts that need to be understood, namely the Indonesian economy is organized based on economic democracy, with the following principles: (i) togetherness, (ii) the efficiency of justice, (iii) sustainable, (iv) environmental, (v) independence, (vi) the balance of progress, and (vii) the unity of the national economy. With the implementation of all these principles together, it is expected the Indonesian economy can grow rapidly continuously, thus providing welfare for all people in all regions of the country, and can be excel in global competition, does not depend entirely on imports and foreign capital (both investment and debt), do not damage the environment and ensure the unity and integrity of the nation of Indonesia¹¹.

Furthermore, it should be stressed that the Government of Indonesia in running the national economy, of course, does not only refer to the provisions of Article 33. Several other Articles of the 1945 Constitution relating to economic governance should also be a reference. Some of the Chapters, such as Article 23 Paragraph (1) which states that “Budget revenues and expenditures as a form of state financial management is determined annually by law and carried out openly and responsibly for the welfare of the people.” Then Article 27 Paragraph (2) which states that “Every citizen has the right to work and a decent living for humanity.”

The next Chapter relevant to the management of the national economy, that is Article 28C Paragraph (1), Article 28H Paragraph (1), Article 31 and Article 34. Article 28C Paragraph (1) affirmed that “Everyone has the right to develop themselves through the fulfillment of basic needs, entitled to education and to benefit from science and technology, arts and culture, in order to improve the quality of life and for the welfare of mankind.” Whereas Article 28H Paragraph (1) is also set concerning human rights, states “Everyone has the right to live physical and spiritual prosperity, reside, and get a good living environment and healthy, as well as the right to health services.”

¹⁰ *Ibid*, P. 272.

¹¹ *Ibid*

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As for Article 31 provides guidelines that “(1) Every citizen is entitled to education. (2) Every citizen is obliged to follow basic education and the government must finance it. (3) The Government shall manage and organize a national education system that enhances faith and piety and good character in the context of the intellectual life of the nation, which is regulated by law. (4) The State prioritizes education budget at least twenty percent of the budget revenue and expenditure and of budget revenue and expenditure to meet the needs of national education.

And lastly described by Article 34 which is also very important as a mandate for state officials, with a charge as follows: (1) The poor and neglected children who are maintained by the state. Paragraph (2) The State shall develop social security system for all people and empower the weak and unable accordance with human dignity. The state is responsible for the provision of health care facilities and decent public service facilities.

4. Discourse of joining TPP for Indonesia, the national economic system perspective

Based on the description of the TPP, as previously discussed, at least there are some concerns that Indonesia joins the TPP. Some things to watch out for when Indonesia took part in the TPP of which is indicative of the occurrence of negative impacts as follows:

- i. Indonesia will lose its role in exercising control over the public sector.
- ii. In Indonesia, foreign domination will occur in the procurement of goods and services of the Government.
- iii. SOE will be barren for the national interest.
- iv. Indonesian citizens will lose access to medicines at low prices.
- v. Food sovereignty and farmer’s sovereignty would be threatened, and smallholder’s conditions will be getting worse.
- vi. The loss of the state’s role in providing protection against labors (workers) in the country.
- vii. The competitiveness of Small and Medium Micro Enterprises became worse off due to crushed by the power of large companies.
- viii. Indonesia will be positioned on par with foreign companies of the TPP member countries and will continue to be a defendant in ISDS.

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Based on a review of the national economic system, it can be affirmed that the President of Indonesia, is not basically prohibited conducting cooperation with foreign parties, including joining the TPP, as long as such cooperation, both procedurally and substantively, is in accordance with the provisions of the constitution.

In the procedure, the President may conduct international cooperation, including joining TPP, subject to the Parliament's approval. Article 11 of the 1945 Constitution Paragraph (1) and (2) has mandated that: (1) the President with the approval of the House of Representatives to declare war, make peace and agreements with other countries. Paragraph (2) "the President in making other international agreements, arising from extensive and fundamental to the lives of people related to state financial burden or requiring changes or creation of laws to the approval of the House of Representatives."

In the substance, the President also allowed to establish cooperation in the field of economy with other countries, including joining the TPP, the whole content of the agreement in line with the principles of democracy economic management as stipulated in Article 33 of the 1945 Constitution, does not interfere the sovereignty of the state in providing basic services and protection to its citizens, especially people who are in a marginal position, positive impact on the welfare of the people, increase the productivity of Small and Medium Micro Enterprises, reducing poverty and unemployment, as has been confirmed in Article 23 Paragraph (1), Article 27 Paragraph (2), Article 28C Paragraph (1), Article 28H Paragraph (1), Article 31 and Article 34 of the 1945 Constitution.

Thus Indonesia under President Jokowi can continue his idea to join the TPP, but first it needs to conduct some of the following:

- i. The President must seek the approval from the House of Representatives, besides the agreement which will have a big impact on the Indonesian economy, TPP agreement also requires that the ratification process must be approved by the legislative.
- ii. The President and his staff had to review and study the TPP agreement document deeply and comprehensively, and the results of the study need to provide assurance that the TPP document does not conflict with the principles of constitutional economy.

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- iii. Indonesia does not follow the TPP since the beginning of its formation, so that Indonesia did not have a chance on the concept of TPP negotiations. Because it takes a smart step and strategies so that Indonesia in joining the TPP, positioning Indonesia became one of the member states that have high bargaining power and does not occupy an inferior position in the view of the TPP member countries.
- iv. The President will also need the input from various parties, especially those who do not support the joining of Indonesia in the TPP. The President needs to prove that the fear of many negative impacts of the cooperation with the TPP is unwarranted and the fear is not true.

5. Conclusion and recommendation

Based on the discussion and study in previous chapter, the conclusion can be formulated as follows:

- a. President of Indonesia, is not basically prohibited from cooperation with foreign parties, including joining the TPP, as long as such cooperation, both procedurally and substantively, is in accordance with the provisions of the constitution.
- b. In the procedure, the President may conduct international cooperation, including joining TPP, subject to the Parliament's approval. Article 11 of the 1945 Constitution.
- c. In the substance, the President also allowed to establish cooperation in the field of economy with other countries, including joining the TPP, the whole content of the agreement in line with the principles of democracy economic management as stipulated in Article 33 of the 1945 Constitution, does not interfere the sovereignty of the state in providing basic services and protection to its citizens, especially people who are in a marginal position, positive impact on the welfare of the people, increase the productivity of Small and Medium Micro Enterprises, reducing poverty and unemployment, as has been confirmed in Article 23 Paragraph (1), Article 27 Paragraph (2), Article 28C Paragraph (1), Article 28H Paragraph (1), Article 31 and Article 34 of the 1945 Constitution.

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Recommendation

Indonesia, under President Jokowi can continue his idea to join the TPP, but first, it is recommended to do the things, as follows:

- a. The President must seek the approval from the House of Representatives, besides the agreement which will have a big impact on the Indonesian economy, TPP agreement also requires that the ratification process must be approved by the legislative.
- b. The President and his staff had to review and study the TPP agreement document deeply and comprehensively, and the results of the study need to provide assurance that the TPP document does not conflict with the principles of constitutional economy.
- c. Indonesia does not follow the TPP since the beginning of its formation, so that Indonesia did not have a chance on the concept of TPP negotiations. Because it takes a smart step and strategies so that Indonesia in joining the TPP, positioning Indonesia became one of the member states that have high bargaining power and does not occupy an inferior position in the view of the TPP member countries.
- d. The President will also need the input from various parties, especially those who do not support the joining of Indonesia in the TPP. The President needs to prove that the fear of many negative impacts of the cooperation with the TPP is unwarranted and the fear is not true.

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**MODELS OF ELECTION OF THE HEAD OF REGIONS AFTER THE 1998
POLITICAL REFORM IN REALIZING LOCAL DEMOCRACY IN
INDONESIA**

Satriawan, I. & Salim, A.***

Abstract:

Local election is one of the important of democracy in Indonesia. After the 1998 political reform Indonesia has tried to find out some model of local election. The research aims to evaluate the implementation of local democracy in the election of the Head of Regions (Governor, Regents, Mayors) after the 1998 political reform in Indonesia. The research is a normative legal research with statute approach. The data used is secondary data. The data is taken through library research which consists of primary legal source, secondary legal source and tertiary legal source. The result of research shows that there are 4 models of Local Election of the Head of Regions after the 1998 political reform, they are as follows: 1) Indirect local election, 2) Direct election. Direct election has some various models such as direct local election without independent candidate, direct election with independent candidate and direct election with simultaneous election. The practice of simultaneous local election also shows

* Faculty of Law, UniversitasMuhammadiyah Yogyakarta, Ringroad Barat, Tamantirto, Kasihan Bantul, Yogyakarta, Indonesia, Email: satria@justice.com

** Faculty of Law, UniversitasMuhammadiyah Yogyakarta, Ringroad Barat, Tamantirto, Kasihan Bantul, Yogyakarta, Indonesia, Email: ratuationg.sh@gmail.com