



Juridical Analysis of the Appointment of Acting Officials in the Simultaneous Regional Elections in 2024 and It's Implications for the Principles of Democracy in Indonesia

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Abstract: This study analyzes juridically the appointment of Acting Regional Heads in regional head elections (Pilkada) held simultaneously in 2024 and its implications for the principles of democracy in Indonesia. In the context of simultaneous regional elections, the vacancy of the position of regional head caused by the term of office that ends before the implementation of the elections is filled by the Acting Regional Head based on the provisions of Article 201 paragraph (9), (10), and (11) of Law Number 10 of 2016 governing Regional Head Elections. Acting Heads are appointed from among officials with Middle high-leadership positions in the Governor, and Primary high-leadership in the Regent or Mayor. This research uses a normative juridical method with a doctrinal approach, namely analyzing relevant legislation, jurisprudence, and the views of legal experts. The analysis shows that the appointment of Acting Regional Head is a strategic policy needed to maintain the continuity of regional government. However, the appointment mechanism that is fully determined by the central government without community involvement has various implications for democratic principles, such as reduced public participation, reduced accountability of the process of filling positions, and the absence of direct accountability to the people. The implications of the results of the analysis and studies in this research can be input and consideration for policy makers to improve the legal framework governing the appointment of Acting heads, so as to strengthen democratic principles and maintain political and government stability at the provincial, district or city level.

Keywords: Simultaneous Regional Elections 2024, Acting Regional Head, Principles of Popular Sovereignty, Legitimacy of Acting.

Introduction

The establishment of Acting Regional Government is a government policy designed to ensure the continuity of government functions at the regional level when there is a definitive Regional Head position that is still unfilled. In the Indonesian government system, this mechanism is regulated through Law Number 10 of 2016 which is the second amendment to Law Number 1 of 2015 which regulates the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 relating to the Election of Governors, Regents and Mayors. Based on Article 201 paragraph (9), and paragraph (10) the Acting Governor is appointed by the President based on the recommendation of the Minister of Home Affairs,

while the Acting Regent and Mayor are directly appointed by the Minister of Home Affairs based on the proposal of the permanent Governor. This appointment is made to fill a temporary vacant position until the election of a permanent Regional Head as a result of a general election.

The rules stipulating the appointment of Acting Governors are contained in Article 201 Paragraph (9) of Law Number 10 of 2016 which was amended into Law Number 6 of 2020 concerning the Election of Governors, Regents and Mayors. Article 201 Paragraph (9) emphasizes that, the Acting Governors, Regents and Mayors until the election of definitive regional heads through simultaneous elections in 2024. Furthermore, Paragraph (10) states that in the event of filling a vacancy in the position of Governor, an Acting Governor is appointed from the position of the highest Middle leader until the inauguration. Next, Paragraph (11) states, to fill the vacant position of Regent/Mayor, an Acting Regent/Mayor shall be appointed from the position of high-ranking Primary leader until the inauguration of the permanent Regent/Mayor. Furthermore, Law Number 8 Year 2015 Article 201 paragraphs (8) and (9) state that in the case of filling a vacancy, the acting provincial leader is appointed from a Middle high-ranking official until the definitive governor is inaugurated in accordance with applicable legal procedures. Furthermore, for the appointment of acting regional leaders at the regency or city level, it comes from high-ranking Primary leaders until the establishment of a permanent regent or mayor based on the law.

The appointment of Acting Regional Heads is usually carried out as a transitional step to overcome leadership vacancies in the regions, especially when the term of office of the Regional Head has ended, but Regional Head elections (Pilkada) have not yet been held. This situation becomes relevant with the postponement of simultaneous regional elections until 2024, as stipulated in Law Number 6 of 2020. This delay has resulted in the elimination of regional head elections in two consecutive years, namely 2022 and 2023, so that many regions, both at the provincial and district / city levels, do not have definitive regional heads. The Acting Regional Heads that have been appointed in 2022 are 101 people and in 2023 there are around 171 regional leaders appointed. Thus, the total number of Acting Heads of Regional governments that have been appointed and appointed by the central government until 2024 is 272 people. This is almost half of the total number of local government areas in Indonesia. In addition to the large number of Acting Regional Heads appointed, the term of office of the Acting Regional Heads is also relatively long, namely one to two years until the election of permanent Regional Government officials as a result of the 2024 simultaneous regional elections. However, the appointment of Acting Regional Heads with a fairly long term of office has the potential to have implications that are not in line with the principles of regional autonomy as mandated in the regional head elections law.

The appointment of Acting Regional Heads is currently the authority of the Minister of Home Affairs, although there are no technical regulations that specifically regulate the appointment mechanism. In the provisions stipulated by the Constitutional judges in Number 67/PUU-XIX/2021, the Constitutional Court explained that the mechanism for replacing acting regional leaders appointed due to vacancies in the Regional government

must be interpreted in accordance with the democratic framework, as stated in the 1945 Constitution of the Republic of Indonesia. Based on the provisions of Article 18 paragraph (4) of the 1945 Constitution, the Head of the Regional government must be determined based on democracy through direct elections. This article is in line with the provisions in Law Number 32 of 2004 concerning Regional Government, regulating the implementation of regional head and deputy regional head elections, which must be carried out directly by the people proposed by a political party or coalition of political parties. This has led to a shift from the principle of decentralization to centralization. In addition, the process of appointing the Acting Head, which is done through appointment - not through the mechanism of regional elections as a form of democracy at the regional level - raises legal issues related to popular legitimacy and democratic values. Therefore, requirements or criteria that are closer to democratic principles are needed to minimize the negative impact of this policy.

As a democracy, Indonesia applies the principles of good governance, which prioritize popular sovereignty, transparency, accountability, and public participation in every decision-making process. However, the mechanism for appointing Acting Regional Heads raises critical questions about its compatibility with these principles. Democracy actually prioritizes community involvement in determining their leaders through the electoral process

In the context of constitutional democracy, there are two main reasons that make the restructuring of the Regional Head election mechanism a necessity, as follows:

1. The stipulation of Acting Regional Heads shows that the application of popular sovereignty in regional head elections has changed
2. In the context of direct democracy, the appointment of Acting Regional Heads by the central government, in this case through the Minister of Home Affairs, is considered to limit regional autonomy in determining their Regional Heads independently. The imposition of a one to two year term of office for the position of Acting Regional Head is seen as less in line with the principle of direct democracy that has been embraced by the state.

While the appointment of Acting Regional Heads is normatively justified, its implementation can have a negative impact on the quality of democracy. If the appointment process is not conducted in a transparent and accountable manner, it can undermine the legitimacy of the appointed Acting Head and reduce public trust in local government. For example, the refusal of some Governors to ratify Acting Regional leaders appointed by the Ministry of Home Affairs indicates that there is a gap between the policies of central authorities and the wishes of local governments. In addition, there were lawsuits filed by several parties at the State Administrative Court (PTUN) against the president and the minister of home affairs who considered the appointment of acting regional leaders to be contrary to the legal mechanisms in place.

As for some of the problems arising as a result of this acting appointment, there was criticism of the Minister of Home Affairs, Tito Karnavian, who appointed the Acting

Governor of West Papua on May 12. The public questioned the rationale behind the appointment of a retired police general with no experience in civilian government as Acting Governor. This situation raises concerns about democratic principles in the selection process of regional officials. In addition, the appointment of active TNI members as PJ regional heads has also come under scrutiny. Criticisms include the disregard for Constitutional Court Decision No. 15/PUU-XX/2022 and inconsistency with ASN Law No. 5/2014, which stipulates that ASN structural positions can only be filled by active TNI/Polri members in ten specific ministries or institutions - excluding regional governments. This decision is seen as contradicting the spirit of reform that has abolished the dual-function of Indonesian National Armed Forces (ABRI) and shows a distrust of civilian supremacy. Resistance also came from governors in some regions. For example, the Governor of Southeast Sulawesi, Ali Mazi, and the Governor of North Maluku, Abdul Gani, showed their dissatisfaction by delaying the inauguration of PJ Regent appointed by the central government instead of their proposed candidates. The difference in views between the central and local governments in the appointment process is inevitable, given that the governors feel they have a strong basis to defend their proposed candidates.

The appointment of the Acting Head of the Regional Government by not involving the people, either openly or privately, is considered a form of political erosion of the principles of democracy. The procedure of appointing an acting head of a region that does not go through the process of general elections or regional head elections is seen as contrary to the principles of democracy which prioritize community participation. As a result of the appointment of the Acting Head, public participation in the appointment of the Acting Head is reduced and can have a negative impact on the legitimacy of the local government. In addition, the lack of transparency in acting appointments risks worsening relations between the central and local governments, lowering public trust, and reducing public political participation.

Therefore, while the appointment of Acting Regional Heads aims to be an administrative solution to maintain the continuity of government, its implications for local political stability, government accountability, and democratic legitimacy must receive serious attention. As one solution, the Ombudsman of the Republic of Indonesia recommends that the Ministry of Home Affairs (Kemendagri) develop technical rules governing the procedures for appointing Acting Regional Heads. This rule is proposed to be set forth in the form of a Government Regulation (PP) so that it has more operational legal force and can be a clear guideline in the appointment process. It is important to ensure that this process is carried out within a clear legal framework and in line with substantive democratic values, which emphasize fairness and active community involvement in decision-making and so that it is not used for political interests.

The results of this study recommend the need for reform in the mechanism for appointing Acting Regional Heads so that the process is more open, involves active community participation, and focuses on assessing the competence and professionalism of Acting candidates. The government is also expected to ensure that appointments are made

by prioritizing the public interest and avoiding excessive domination of political interests. Such reforms will not only strengthen the principles of democracy in Indonesia but also help maintain and increase public trust in government.

Methodology

This research is a normative legal study, which is a legal study approach that focuses on analyzing library data or secondary data as analytical material. As explained by Soerjono Soekanto, and Sri Mamudji (2010) in Rifa'I, and I. J (2023) the legal analysis method is carried out by searching for laws and regulations, relevant literature, and other legal sources related to the issues being studied. In this study, researchers adopted a doctrinal approach, which is a method that analyzes problems based on legal rules, jurisprudence, and doctrine. This approach includes in-depth analysis of cases related to the appointment of Acting Regional Heads, and regulations on acting regional heads, as well as relevant previous research findings.

This research is oriented towards comprehensively examining and understanding the legal framework governing the appointment of Acting Regional Heads, including the legal basis, procedures, and criteria used in the process. In addition, this study also examines the implications of the appointment of Acting Regional Heads with regard to the principles and principles of democracy in Indonesia, particularly in relation to public participation and the implementation of the people's mandate. Therefore, this research is expected to provide theoretical and practical benefits in order to strengthen democratic governance and ensure a balance between the authority of the central and regional governments.

Results and Discussion

Appointment of Acting Head of Local Government without Election Process

The simultaneous general elections planned for 2024 bring considerable political challenges, one of which is the leadership vacuum in various regions. This vacancy occurred because there were no regional head elections (Pilkada) from 2022 to 2023. As a result, several regions, both in the provincial and district/city areas, did not have permanent regional leaders for a certain period. In overcoming this situation while ensuring the continuity of the wheels of government at the regional level, the government took a strategic step by appointing Acting Regional Heads (PJ) as a temporary solution. This mechanism is set out in detail in Law No. 10/2016 on Regional Head Elections.

Normatively, the appointment of acting regional heads is based on the provisions of Article 201 paragraph (9), paragraph (10), and paragraph (11) of Law Number 10/2016. The three paragraphs regulate the process and requirements in filling the vacancy of the position of head of local government, with details as follows:

Article 201 Paragraph (9): This provision stipulates that "To fill vacancies in the positions of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor whose terms of office expire in 2022 as referred to in paragraph (3) and

whose terms of office expire in 2023 as referred to in paragraph (5), Acting Governors, Acting Regents, and Acting Mayors shall be appointed until the election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors through simultaneous national elections in 2024."

Article 201 Paragraph (10): This paragraph explains that in the event that "To fill a vacancy in the position of Governor, an Acting Governor is appointed from a Middle high-leadership position until the inauguration of the Governor in accordance with the provisions of laws and regulations."

Article 201 Paragraph (11): This paragraph stipulates that "To fill a vacancy in the position of Regent/Mayor, an Acting Regent/Mayor shall be appointed from a high-ranking Primary leadership position until the inauguration of the Regent, and Mayor in accordance with the provisions of laws and regulations."

This arrangement aims to ensure continuity of government in the regions during periods of leadership vacancies. The appointment of acting regional heads does not only aim to fill administrative vacancies, but also to maintain political stability, security, and public services. In order for the implementation of duties to run effectively, the appointed Acting regional head must have adequate competence, honesty, and experience in accordance with the needs of each regional area.

The process of appointing Acting Regional Heads has a close relationship with the dismissal mechanism of local government leaders who have completed their tenure. Acting local government leaders will carry out their functions and obligations until the definitive government leader from the election is officially inaugurated. The provisions regarding this are listed in Article 174 paragraph (7) of Law of the Republic of Indonesia Number 10 of 2016, which is the second amendment to Law Number 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 into law. The content of the article of the law reads: "In the event that the remaining term of office is less than 18 (eighteen) months, the President shall appoint an Acting Governor and the Minister shall appoint an Acting Regent/Mayor".

The appointment of acting regional government leaders has a considerable impact on the sustainability of democracy in Indonesia, especially since there is no stage of direct election of regional heads from the people. In fact, Pilkada is one of the forums for the community to channel their political rights directly, reflecting democratic values that prioritize openness, equal rights, and justice for all citizens.

The implications of this regional head appointment mechanism can be analyzed from the following aspects:

1. Return to Centralization of Power by the Central Government

The process of appointing Acting Local Governments is considered to lead to centralization of authority, where central government officials have greater control over local governments. This can strengthen the dominance of central authority over the regions, which has the potential to reduce regional autonomy which was previously based on the

principle of decentralization which is the main foundation in the local government system in Indonesia, where local governments are given the authority to manage and regulate government affairs independently. In a democratic perspective, decentralization plays a role in bringing public services closer to the community, improving the efficiency of local governance, and opening up opportunities for community participation in political and administrative policy-making processes.

2. Lack of Participation

The lack of transparency and accountability in the appointment process of Acting Heads of Local governments can lead to a decrease in public involvement in political mechanisms, either directly or indirectly. The author is also concerned that acting appointments that are made without transparency and undemocratic can open up opportunities for the entry of political interests from the central government to the regional level. In good governance, the process of governance must be transparent in providing services to the public.

To realize open government, protection of five main rights is required, namely:

- a. The right to monitor the actions of public officials in carrying out their duties in the public sector.
- b. The right to access information related to public policies and services.
- c. The right to participate in the public policy formulation process.
- d. The right to freedom of expression, including freedom of the press as one of its manifestations.
- e. The right to object if the previous four rights are not fulfilled.

The principle of transparency provides an opportunity for the public to understand the process of policy formulation and implementation. Transparency enables the public to monitor and evaluate policies, ensure that allocations and expenditures are in line with the budget, and are conducted efficiently. An adaptive and responsive government relies heavily on its ability to inspire, utilize, and build active engagement from various sectors of society. Through public participation, the government can be more alert in responding to various changes and be able to innovate in accordance with existing demands in order to carry out its duties in providing services to the community.

3. The Decline of the Principle of Sovereignty of the People

The appointment of Acting Regional Heads without going through a mechanism that has democratic values is seen as a setback from the principle of popular sovereignty as stipulated in the 1945 Constitution, more precisely Article 18 paragraph (4) which states that the election of Regional Heads must be carried out based on the participation of the people, which should be the main basis in the process of making government policies. This article is also in accordance with the statement of Samuel P. Huntington (1997) as cited by Fahmi (2012), a political system can be categorized as democratic if the public policy makers who have the highest power in the system are elected through free, fair, honest, and gradual elections. In addition, in a democratic system, each candidate must have an equal

opportunity to compete for votes, and almost all adult citizens have the right to participate in elections.

The enthusiasm to implement direct local elections (pilkada) by the local people is based on the following backgrounds:

1. Regulation No. 22/1999 and the supporting regulations under it are considered no longer suitable for the state institutional structure that has undergone several amendments to the 1945 Constitution. In particular, Article 18 paragraph (4) of the 1945 Constitution emphasizes that governors, regents and mayors must be elected based on democracy, thus encouraging the need for a direct election mechanism by the people.
2. The public wants regional heads to be elected transparently and to participate in the hope that the leaders elected through this mechanism will be able to bring positive changes and improve the welfare of the people. During the enactment of Law No. 22/1999, the aspirations of the local people received less attention, especially in realizing local governments that are clean, responsible, free from corruption, collusion, and nepotism (KKN), and able to create balanced justice.
3. The election of regional heads involving DPRD's is often colored by the practice of political interests, including in the process of discussing the Accountability Report (LPJ) of the regional head as well as in the mechanism of electing the regional head itself. This has led to public dissatisfaction with the existing system.

On the three bases above, the reason that often arises as well as the core of people's aspirations is the desire to have leaders who are truly capable of bringing progress, welfare, and justice in the region. People expect a leader who is wise, thoughtful, and can answer their needs as a whole.

In the system of popular sovereignty, the people have a role as the highest power holder who mandates state officials to carry out institutional functions, both in the executive and legislative governments. One example of the application of power derived from the people implemented in Indonesia is by participating in general elections. Therefore, Indonesia's political system must ensure the application of strong democratic principles, including aspects of transparency, active public participation, and integrity in every stage of the appointment process of state officials. This is especially important at the regional level, to ensure the continuation of a harmonious and balanced relationship between the central and regional governments. In addition, this mechanism also serves to ensure that every citizen has an equal opportunity to participate in the political decision-making process. Thus, political stability and healthy governance can be realized, while reflecting an inclusive democracy that is responsive to the needs of society.

Legitimacy of Acting Appointments

The appointment of Acting regional leaders is a form of application of the principle of delegation of power by the President (*political appointee*), without being based on a direct *election system* by the people (*election system*) as is customary for general elections at the regional level. Normatively, an Acting local government leader can be said to be legitimate if he/she has met the requirements specified for the Middle High-leadership Position (in the case of the position of Governor) and the Primary High-leadership Position (in the case of the position of Regent or Mayor). In addition, the Acting Head must have sufficient competence and receive approval from the President for the Acting Head of a province, and the Minister of Home Affairs for the Acting Head of a regency or city. This situation is in accordance with Article 132 Paragraph (3) and Government Regulation No. 6/2005 on the Election, Ratification, Appointment, and Dismissal of Regional Heads and Deputy Regional Heads. The article states that the Acting regional head is responsible to the President through the Minister of Home Affairs for the Acting Governor, and to the Minister of Home Affairs for the Acting Regent or Mayor. The content of the article in question is explained related to the Acting regional head of the Governor, Regent or Mayor in carrying out his responsibilities as head of the regional government is no longer responsible to the people, but to the central government as an official who has appointed him.

The process of appointing Acting Regional Heads has received various contradictions because it is not in accordance with the application of popular sovereignty and the principles of democracy in Indonesia. In a democratic system, the people participate in public decision-making, one manifestation of which is participating in the process of electing leaders, including acting regional heads. In the absence of direct involvement of the people in the appointment mechanism, the legitimacy of acting heads of local governments is often questioned. As stated by Rousseau who emphasized that the legitimacy of government depends on its conformity with the public's wishes. Aristotle also stated that a legitimate government is one that aims to fulfill the interests of the community, not the interests of the ruler. The ratification of the position of acting regional head through a mechanism that involves popular participation is considered to provide stronger legitimacy, create transparency, and increase accountability. In addition, such mechanisms also allow elected Acting Heads to be directly accountable to the communities they serve.

Thus, in the implementation of the popular sovereignty system, the legitimacy of a government comes from the people as the recipient of the policy (*the governed*). A government is only considered good and legitimate if it has direct endorsement from its people. This authorization creates an obligation for the people to obey the government. Therefore, the political legitimacy of a government is very useful in a democracy for two main reasons. First, political legitimacy gives the people the confidence to follow government policies that are the result of collective consent given by the people. If a government does not gain legitimacy through popular consent, it loses the people's trust to

govern, and the people have no moral obligation to obey. Second, political legitimacy becomes the moral foundation for the government in carrying out its duties and authorities. In the context of democracy, a government that obtains authorization from the people also has a legal basis, which makes the government process more effective. In contrast, an appointed Regional Head does not have strong government legitimacy, so his authority is weak and insufficient to effectively enforce policies.

Therefore, in an effort to make the appointment of acting local government a better solution, the government needs to pay close attention to the implementation of a democratic, transparent and accountable mechanism. Acting regional heads appointed through such a process will not only gain stronger legitimacy, but will also be trusted to continue the regional government policy plans that have been designed by the previous regional head. The acting head also needs to have qualified capabilities and a vision and mission that is in line with the direction of ongoing development, so that the sustainability of regional development can be maintained without significant obstacles.

Conclusion

The appointment of acting regional heads in the 2024 Simultaneous Regional Elections is a major concern in maintaining a balance between the principles of democracy and the need for effective governance. Under existing regulations, the central government is authorized to appoint temporary Acting Heads in regions that cannot hold direct regional elections. While this step is necessary to ensure the continuity of government, it poses challenges in maintaining the level of popular participation and guaranteeing the legitimacy of officials appointed by the central government, who are not elected through the electoral mechanism.

Popular participation is one of the fundamental aspects of a democratic system. Direct election by the people is the main mechanism for people to determine their leaders, so when acting regional heads are appointed without involving the people in the election process, this can reduce the level of community participation. People who should be able to voice their choices through their voting rights feel marginalized from the democratic process. As a result, public trust in the political system and local government may decline. When public involvement is reduced, the sense of responsibility for government policies and outcomes will also erode, potentially reducing the quality of governance at the local level.

Another issue that arises in relation to the appointment of acting regional heads is the political legitimacy of these officials. As an official who is not directly elected by the people, the Acting regional head does not have a strong basis of political legitimacy. Although their appointment is legal, the fact that they were not elected by the people can create dissatisfaction among citizens, especially if they feel that they do not represent local interests or aspirations. This invalidity has the potential to undermine the relationship

between the local government and the community and worsen political stability at the local level. If the appointment of Acting Officials without direct elections continues, there is a great risk of erosion of democratic principles, as communities do not feel they have full control over their leaders. As such, it is important to design a system that allows for more inclusive participation in the political process and ensures that any policies adopted have strong legitimacy in terms of both law and community support.

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