


Mechanism for the Appointment of Acting Regional Heads Who Participate in the Simultaneous Regional Elections

Rifki Adrian^{1*}, Faisal Akbar Nasution², Eka N A M Sihombing³, Sutiarnoto⁴

^{1,2,3,4} Faculty of Law, Universitas Sumatera Utara, Medan, Indonesia.

 : rifkiadrian415@gmail.com

Corresponding Author*



Abstract

Introduction: Regional Heads, which are often not in accordance with the Constitutional Court Decision Number 67/PUU-XIX/2021, that in choosing the Acting Head, it must be measurable and clear that it does not ignore the principles of democracy, pay attention to regional aspirations and be carried out openly, transparency and accountability. This is because there is no regulation that contains how the mechanism for electing Acting Regional Heads is permanent, so that it leads to centralistic conflicts of interest in local governments.

Purposes of the Research: To examine in this study what the Mechanism for Appointment of Acting Regional Heads Who Participate in the Simultaneous Regional Elections.

Methods of the Research: The research method carried out is normative legal research with a statutory research approach (Statue Approach). The data sources used were secondary data with Premier legal material, secondary legal material and Tresier Law material, data analysis used by Qualitative method. This research discusses the arrangement, appointment mechanism, as well as the duties and authorities of acting regional heads in the context of the implementation of the Simultaneous Regional Elections in Indonesia.

Results Main Findings of the Research: The findings of the study show that the regulation of acting regional heads is regulated in Article 201 of Law Number 10 of 2016 and Regulation of the Minister of Home Affairs Number 4 of 2023. However, this arrangement is not in accordance with the principle of a just and democratic state of law. The mechanism for appointing acting regional heads also does not involve community participation and tends to be centralistic. Meanwhile, the duties and authority of the acting regional head refer to the definitive duties and authorities of the regional head, although there are certain limitations. Therefore, rules are needed that are more in line with the principles of the state of law and democracy, and involve community participation in the process of appointing acting regional heads. In addition, the government needs to consider regional aspirations in appointing acting regional heads.

Keywords: Acting Regional Head; Simultaneous Regional Elections; The State of Law; Democracy.

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INTRODUCTION

The state of Indonesia is a state of law, therefore the law must be the basis and guide for the implementation of government.¹ In practice, the implementation of the State government is carried out by the State civil apparatus. This is in accordance with Logemann's opinion that the State is a set of positions held by the State to realize the goals of the State.² The basic law (Constitution) of Indonesia is the 1945 Constitution of the Republic of Indonesia. Regional division refers to Article 18 paragraph 1 of the 1945

¹ Ias Muhlashin, "Negara Hukum, Demokrasi Dan Penegakan Hukum Di Indonesia," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 8, no. 1 (2021): 87-100.

² Jetty Erna Hilda Mokat, "Hukum Administrasi Negara," *Penerbit Tahta Media*, 2023.

Constitution which states that the Unitary State of the Republic of Indonesia is divided into provinces, districts, and cities that have regional governments regulated by law, indirectly giving the impression that the State of Indonesia has two governments, namely the central government and local governments.

Law Number 9 of 2015 concerning Regional Government provides the widest possible autonomy to the regions to accelerate community welfare through services, empowerment, and community participation, as well as increasing regional competitiveness. This regional autonomy must pay attention to the principles of democracy, justice, privileges, specificity, and regional potential in the system of the Unitary State of the Republic of Indonesia. The government in the regions is represented by regional heads and deputy regional heads who are representatives of the central government in organizing the government.³ Based on Article 18 paragraph (4) of the 1945 Constitution, governors, regents, and mayors are democratically elected. Direct regional head elections began in 2005. Regional heads and deputy regional heads are elected directly by the people through the Regional Elections on the principles of direct, general, free, confidential, honest, and fair. The term of office of the regional head is 5 years and can be re-elected for a subsequent term.⁴

The implementation of regional head elections is regulated in Article 18 Paragraph (4) of the 1945 Constitution, which states that the Governor, Regent, and Mayor are democratically elected. However, this provision does not require direct election by the people. The direct election of regional heads is regulated in Article 1 Number 1 of Law Number 8 of 2015, which amends Law Number 1 of 2015, which affirms that the election of Governors, Regents, and Mayors is carried out directly and democratically as a form of implementing people's sovereignty. In addition, the mechanism for appointing a temporary substitute public acting is regulated differently from the definitive acting officer, with different authority. The Acting Agent certainly has a different position and authority from the definitive Acting Officer, in terms of the mechanism for appointing the Acting Agent itself is clearly different from the definitive Acting Agent.⁵

Previously, in the implementation of local government, if there was a condition that caused regional heads and deputy regional heads to simultaneously be "temporarily obstructed" from carrying out routine government duties, the regional secretary could be appointed as the Daily Executor of the Regional Head.⁶ The regional secretary is appointed as the Daily Executor of the regional head who is tasked with carrying out the daily duties of the regional head that is not related to strategic policy making in financial, institutional, personnel, and licensing aspects, as well as other strategic policies. However, since the simultaneous regional head election in 2016, the term Regional Head Acting as a substitute public official who is tasked with carrying out the duties and authorities of regional heads as long as the regional head and deputy regional head are permanently unable to do so.⁷

Constitutional democracy can be interpreted as democracy that is run on constitutional principles. Article 1 paragraph (2) of the 1945 Constitution states that Indonesia is a country of law and is run according to the Constitution. This means that democracy is run while its

³ Ardin Ardin, "Historis Dan Mekanisme Pembentukan Peraturan Daerah Di Indonesia," *Maleo Law Journal* 2, no. 2 (2018): 161–78.

⁴ I Gede Hartadi Kurniawan and Henry Arianto, "Polemik Pembatasan Masa Jabatan Untuk Jabatan Publik Di Indonesia Terkait Dengan Demokrasi Dan Pancasila," *Lex Jurnalica* 17, no. 3 (2020).

⁵ Fabian Riza Kurnia and Rizari Rizari, "Tinjauan Yuridis Kewenangan Penjabat Sementara (Pjs) Kepala Daerah," *TRANSFORMASI: Jurnal Manajemen Pemerintahan*, 2019, 79–97.

⁶ Kurnia and Rizari.

⁷ Kurnia and Rizari.

flow is still limited by the 1945 Constitution. Therefore, to carry out the position of Acting Regional Head in order to avoid central government intervention to the regions, as well as to ensure the upholding of bureaucratic professionalism as the Acting Head, must be elected in a structured manner and also represent regional aspirations.⁸

The election of Regional Heads and Deputy Regional Heads is carried out directly and inspired by the 2024 Presidential and Vice Presidential Elections which are also held directly. Through Law Number 1 of 2015, the House of Representatives ratified that the Regional Elections were held directly and simultaneously. Regional elections are positioned as an important instrument and strategy to build a democratic local government. The regional elections directly and simultaneously encourage the people/voters to democratically elect regional heads and deputy regional heads (Governor and Deputy Governor, Regent and Deputy Regent, Mayor and Deputy Mayor). It needs to be believed that the regional elections bring a breath of fresh air to the future of democracy that can be felt after the reform. Direct elections, according to Surbakti, have an important purpose in democracy, namely: first, to select leaders and public policies with the principle of people's sovereignty. Second, to transfer conflicts of interest to people's representative institutions, maintaining the integrity of the community. Third, as a means to mobilize people's support for the state and government through participation in the political process.⁹

The limitation of power in a democratic country certainly cannot be separated from the existence of an underlying constitution. The existence of a restriction of power in the government of a democratic country is known as constitutional democracy. These limits are enshrined in the constitution, so that they regulate in detail the limits of the authority and power of the Executive, Legislative, and Judicial Institutions in a balanced manner and supervise each other (checks and balances). As well as providing a fairly broad guarantee in the sense of respect, protection and restoration of citizens' rights and human rights or human rights.¹⁰

Ahead of the 2024 simultaneous regional elections, it is determined that there will be no regional elections in 2022. So that like regional heads whose term of office has expired, there are no regional elections held in the area. Minister of Home Affairs Tito Karnavian then appointed acting regional heads in several regions. This includes appointing one of the Indonesian National Army who is still active as the acting head of the temporary region. Tito admitted that the appointment of Indonesian National Army Brigadier General Andi Chandra As'aduddin as the Acting Regent of the West was deliberate and with careful consideration.¹¹ This certainly violates the spirit of reform to restore the pure function of the Armed Forces of the Republic of Indonesia, which is currently called the Indonesian National Army. Of course, the polemic shows that there is a lack of openness in the process of appointing Acting Regional Heads.

The Minister of Home Affairs' consideration can use practical logic in the field if unwanted things happen. So, the acting regional head needed is the one who understands the conditions and situation in the field. Such logic is still in reasonable and justifiable reason. However, if that is the only reason, then the Minister of Home Affairs is making a

⁸ Mazdan Maftukha Assyayuti, "Urgensi Penataan Ulang Mekanisme Pengisian Jabatan Penjabat Kepala Daerah Perspektif Demokrasi Konstitusional," *Lex Renaissance* 7, no. 2 (2022): 281-95.

⁹ Anwar Alaydrus et al., *Pengawasan Pemilu: Membangun Integritas, Menjaga Demokrasi* (Penerbit Adab, 2023).

¹⁰ Urwatul Wutsqah and Erham Erham, "Diskursus Pembatasan Kekuasaan Di Indonesia Dalam Perspektif Konstitusi Dan Konstitusionalisme," *Jurnal Citizenship Virtues* 4, no. 2 (2024): 771-84.

¹¹ Assyayuti, "Urgensi Penataan Ulang Mekanisme Pengisian Jabatan Penjabat Kepala Daerah Perspektif Demokrasi Konstitusional."

mistake in building the logic of the state. The basis of the argument that is built should be the laws and regulations. If the reason is because of fear of field conditions, for example in conflict areas that are prone to riots. Couldn't the regional acting can coordinate with elements of the Indonesian National Army/the local Indonesian National Police? Therefore, it cannot be completely corrected.

Researcher of the Association for Elections and Democracy Titi Anggraini criticized the lack of openness in the process of appointing acting regional heads. Although the appointment of the governor is in the hands of the president at the suggestion of the Minister of Home Affairs and the appointment of the regent or mayor is the authority of the minister of home affairs on the proposal of the governor, the process must remain transparent and accountable. Titi also said that the government ignored the Constitutional Court's legal considerations in Decision 15/PUU-XX/2022 by not issuing an implementing regulation in the form of a government regulation that regulates the mechanism for filling Acting Regional Heads.¹² The Constitutional Court's decision was not implemented by the government, in the Constitutional Court's decision it clearly contained and ordered the government to make a detailed technical regulation regulating the filling of the acting regional head before the appointment of the regional head. It should be a state institution that can set a positive example by complying with the rules of the Constitutional Court.

The process of appointing Acting Regional Heads, both Regents, Mayors and Governors, is often wrapped in group interests so that the tasks that are necessary for regional development and progress are even inversely proportional to the interests of the group. As well as the process of electing Acting Regional Heads which are often not in accordance with the Constitutional Court Decision Number: 67/PUU-XIX/2021, that in choosing Acting Heads must be measurable and clear and do not ignore the principles of democracy, pay attention to regional aspirations and be carried out openly, transparency and accountability. This is because there is no regulation that contains how the mechanism for electing Acting Regional Heads is permanent, so that it leads to centralistic conflicts of interest in local governments.

Based on a search of previous research in Indonesia, several legal research titles related to the Mechanism for the Election of Acting Regional Heads were found, namely: Nafiatul Munawaroh (2021), with the title Redesign of the Authority of the Acting Authority to Form Laws and Regulations for the 2021 Graduation Year, the difference in the previous research was more focused on discussing how the authority of the Acting Acting Head in Making Laws and Regulations based on theory Authority. Dadan Ramdan (2024), with the title Problematics of the Appointment of Acting Regional Heads during the Transition Period of the 2024 National Simultaneous Regional Elections. The difference in research is that it focuses more on the discussion of the Constitutional Court Decision 67/PUU-XIX/2021 which fills the vacancy of the Acting Regional Head in the 2024 Election.

This research focuses more on the mechanism for appointing acting regional heads during the Pilkada transition period, including administrative challenges and their socio-political impact on local governments. Meanwhile, previous research tends to emphasize more on legal and regulatory procedures that govern the appointment of acting regional heads in the context of simultaneous regional elections, with an analysis of relevant legal and policy aspects. This research highlights more practical and dynamic aspects in the

¹² Assyayuti.

appointment of officials, while the research focuses on the legal and regulatory mechanisms related to the appointment of acting regional heads. Therefore, the researcher wants to discuss in this study what the Mechanism for Appointment of Acting Regional Heads Who Participate in the Simultaneous Regional Head Election is like.

METHODS OF THE RESEARCH

This research is a normative juridical research. Normative juridical research is to seek the truth of coherence to examine whether there are rules and legal norms in the form of orders or prohibitions in accordance with legal principles and whether a person's actions are in accordance with legal principles or legal norms. The nature of the research used to complete this research is prescriptive analysis, namely learning from the values of justice, validation of the rule of law, legal objectives, legal concepts, and legal norms. The normative legal research approach has similarities with what Terry Hutchinson meant about doctrinal research, where law is conceptualized as what is included in the written law itself. Therefore, this study also uses the Statue Approach and also democratic principles and values. The data source used in conducting legal research on this thesis is secondary data. Secondary data is data obtained from official documents, books related to the research object, research results in the form of reports, theses, theses, dissertations, and laws and regulations. After the data has been collected, to complete this study using qualitative analysis in the completion process.

RESULTS AND DISCUSSION

A. Regulation of Acting Regional Heads in Applicable Laws and Regulations in Indonesia

The Regulation of Acting Regional Heads based on Law Number 10 of 2016, as amended into Law Number 6 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2020 concerning the Election of Governors, Regents, and Mayors, regulates the filling of vacancies in the position of regional heads whose term of office expires in 2022 and 2023. Article 201 Paragraphs 9-10 of Law Number 10 of 2016 is the legal basis for the appointment of Acting Governors/Regents/Mayors. Paragraph 9 states that to fill the vacancies in the positions of Governor, Regent, and Mayor whose term of office ends in 2022 and 2023, acting officials are appointed until the definitive regional head is elected through the 2024 national simultaneous regional elections. Paragraphs 10 and 11 stipulate that the acting Governor is appointed from the position of intermediate high leadership, while the acting Regent/Mayor is appointed from the position of primary high leadership.

However, this arrangement poses some problems. First, the legitimacy of the Acting Regional Head is considered weak because the appointment process is technocratic and does not involve the direct participation of the people. This has the potential to ignore the principle of democracy, especially considering the relatively long term of office (2-3 years) before the 2024 simultaneous regional elections are held. Second, the juridical arrangement of the authority of the Acting Regional Head is still gray.¹³ The legal basis spread across several laws, such as Law Number 1 of 2015, Law Number 8 of 2015, and Law Number 6 of 2020, makes the mechanism and procedure for the appointment of acting officials difficult

¹³ Billy Febrima Hidayat, Asrinaldi Asrinaldi Asrinaldi, and Roni Ekha Putera, "Agenda Setting Dalam Penataan Ruang Di Kota Padang (Studi Kebijakan Perda No. 4 Tahun 2012 Tentang Rencana Tata Ruang Wilayah Kota Padang Tahun 2010-2030)," *Ministrate: Jurnal Birokrasi Dan Pemerintahan Daerah* 5, no. 4 (2023): 182-98.

to understand by the public and even the government itself. Third, there are doubts about the neutrality of the Acting Regional Head in the 2024 Simultaneous Regional Elections, where the appointment of acting heads has the potential to be used for certain political interests.

The Constitutional Court through Decision Number 67/PUU-XIX/2021, Decision Number 15/PUU-XX/2022, and Decision Number 37/PUU-XX/2022 emphasized that the filling of vacancies in the position of regional head must still comply with democratic principles. The Constitutional Court recommended that the government make clearer and measurable implementing rules to ensure that the mechanism for filling the acting office takes place in a transparent, accountable, and democratic manner. In addition, the appointed acting officer must have a complete understanding of the Pancasila ideology, government managerial competence, and the ability to cooperate with the Regional People's Representative Council. The Constitutional Court also emphasized the importance of periodic evaluations of the performance of the acting to ensure quality leadership during the transition period.

Based on the recommendations of the Constitutional Court, the government needs to establish special rules that regulate the mechanism and process for the democratic selection of acting regional heads. This rule must ensure that the appointed incumbent has legitimacy and trust from the community, and is able to continue regional development programs without a vacuum of power. Thus, filling vacancies in the position of regional head due to the postponement of the 2024 simultaneous regional elections can be carried out without ignoring the principles of democracy and the interests of the people.

The Regulation of Acting Regional Heads based on the Regulation of the Minister of Home Affairs Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors is a response to the Constitutional Court's recommendation in Decision Number: 15/PUU-XX/2022.¹⁴ The Constitutional Court asked the government to make implementing regulations to follow up on Article 201 of Law Number 10 of 2016, which regulates the filling of vacancies in regional head positions due to the postponement of the 2024 simultaneous regional elections. This Regulation of the Minister of Home Affairs aims to ensure the continuity of development and public services in regions that experience vacancies in the positions of governor, regent, and mayor. The Acting Governor is appointed from the position of intermediate high leadership, while the Acting Regent/Mayor is appointed from the position of primary high leader. Article 2 of Regulation of the Minister of Home Affairs Number 4 of 2023 states that the government appoints Acting Governors, Acting Regents, and Acting Mayors to lead the implementation of government in the regions until the inauguration of the definitive regional heads of the results of the 2024 Simultaneous Regional Elections.

However, this arrangement has raised criticism because the process of appointing Acting Regional Heads seems centralistic and does not involve the direct participation of the people. In fact, regional heads are actually elected by the people through a democratic process. This Regulation of the Minister of Home Affairs is considered to ignore the principle of people's sovereignty, especially because the appointment of acting officials is carried out entirely by the central government without involving the Regional People's

¹⁴ Aryojati Ardipandanto, "Pemilihan Kepala Daerah Serentak 2020: Evaluasi Pelaksanaan Dan Kebijakan," *Kajian* 26, no. 1 (2023): 51–74.

Representative Council or the community. Article 5 Paragraph 1 and Article 10 Paragraph 1 of Regulation of the Minister of Home Affairs Number 4 of 2023 stipulate that the Minister of Home Affairs discusses acting candidates from the proposed proposals, without involving the Regional House of Representatives in the process. This gives the impression that the representation and aspirations of the community are ignored in filling the position of regional head.¹⁵

From the perspective of the concept of the state of law, this arrangement is considered not to fully reflect the principles of a just and democratic state of law. According to Jimly Asshiddiqie, the rule of law must guarantee the principles of democracy and public participation in state decision-making.¹⁶ However, Regulation of the Minister of Home Affairs Number 4 of 2023 does not accommodate the values of justice and community involvement in the process of appointing officials. Abdul Mukthie Fajar also emphasized that the state of law must be arranged as well as possible in the law, taking into account the good intentions that live in society. In this case, the Regulation of the Minister of Home Affairs is considered not to meet these criteria because it does not involve the community in the process of appointing acting officials.

In addition, R. Soepomo emphasized that the state of law must ensure law and order and legal protection for the community.¹⁷ However, Regulation of the Minister of Home Affairs Number 4 of 2023 is considered incapable of achieving legal order because it does not accommodate the aspirations of the community. The centralistic and non-transparent process of appointing acting officials has the potential to cause public distrust in the legitimacy of the appointed incumbents. This is contrary to the principle of the rule of law which guarantees justice and public involvement in the administration of government.

Overall, although Regulation of the Minister of Home Affairs Number 4 of 2023 aims to fill the vacancy of the position of regional head legally, this arrangement is considered not to fully meet the principles of a democratic and just state of law. The process of appointing acting officials that does not involve the participation of the community and the Regional People's Representative Council gives the impression that the central government is taking over the people's sovereignty. Therefore, a more transparent and accountable revision or implementing regulation is needed to ensure that the filling of the position of acting regional head is in accordance with the principles of democracy and justice that are the basis of the Indonesian state of law.

B. Mechanism for the Appointment of Acting Governors/Regents/Mayors in the Context of the Implementation of Simultaneous Regional Elections

The mechanism for appointing Acting Governors/Regents/Mayors in the context of the implementation of simultaneous Regional Elections is regulated in the Regulation of the Minister of Home Affairs Number 4 of 2023.¹⁸ This Regulation of the Minister of Home Affairs was issued in response to the recommendation of the Constitutional Court in Decision Number 15/PUU-XX/2022, which asked the government to make implementing

¹⁵ Intan Sri Anisa and Hellen Last Fitriani, "Tinjauan Hukum Terhadap Mekanisme Pengangkatan Pejabat Kepala Daerah Pengganti Kepala Daerah Yang Habis Masa Jabatan Sebelum Pemilihan Umum Serentak Tahun 2024," *ASAS Law Journal* 1, no. 1 (2023): 38–58.

¹⁶ Arman Rohmatillah Rohmatillah, Moh Sa'diyin, and Ahmad Afan Zaini, "Tantangan Dan Prospek: Implementasi Prinsip-Prinsip Demokrasi Dalam Hukum Tata Negara Indonesia," *JOSH: Journal of Sharia* 2, no. 02 (2023): 90–100.

¹⁷ Zainudin Hasan et al., "Penerapan Nilai-Nilai Pancasila Dalam Pembentukan Peraturan Hukum Di Indonesia," *Perkara: Jurnal Ilmu Hukum Dan Politik* 2, no. 2 (2024): 138–50.

¹⁸ Syarifuddin Usman, "Polemik Pengangkatan Penjabat Kepala Daerah," *Jurnal Sains Sosial Dan Humaniora (Jssh)* 2, no. 1 (2022): 63–73.

regulations to follow up on Article 201 of Law Number 10 of 2016. The article regulates the filling of vacancies in the position of regional head due to the postponement of the 2024 simultaneous regional elections. This Regulation of the Minister of Home Affairs aims to ensure the continuity of development and public services in regions that experience vacancies in the positions of governor, regent, and mayor. The Acting Governor is appointed from the position of intermediate high leadership, while the Acting Regent/Mayor is appointed from the position of primary high leader. Article 2 of Regulation of the Minister of Home Affairs Number 4 of 2023 states that the government appoints Acting Governors, Acting Regents, and Acting Mayors to lead the implementation of government in the regions until the inauguration of the definitive regional heads of the results of the 2024 Simultaneous Regional Elections.

The process of appointing Acting Regional Heads goes through three main stages: proposal, discussion, and inauguration. Article 3 of Regulation of the Minister of Home Affairs Number 4 of 2023 regulates the requirements for candidates for Acting Governors, Regents, and Mayors, including: having experience in government administration, occupying intermediate high leadership positions (for Governors) or primary (for Regents/Mayors), having a minimum good performance assessment for the last three years, having never been sentenced to severe discipline, and being physically and spiritually healthy. Article 4 and Article 9 regulate the proposal of candidates for Acting Governor and Regent/Mayor. The Acting Governor is proposed by the Minister of Home Affairs and the Provincial Regional House of Representatives, while the Acting Regent/Mayor is proposed by the Minister, Governor, and the Regional House of Representatives of the district/city. However, although the Regional House of Representatives was involved in the proposal, they were not involved in the discussion stage.

Article 5 and Article 10 regulate the discussion stage. The Minister of Home Affairs is responsible for discussing proposals for candidates for Acting Governor and Regent/Mayor. In this process, the Minister can involve non-ministerial government ministries/institutions, such as the Ministry of State Secretariat, the Ministry of State Apparatus Empowerment and Bureaucratic Reform, the State Civil Service Agency, and the State Intelligence Agency. The results of the discussion are then submitted to the President through the Minister of State Secretary to be determined as a Presidential Decree (for the Acting Governor) or a Ministerial Decree (for the Acting Regent/Mayor). Article 6 and Article 11 regulate the inauguration stage. The Acting Governor is inaugurated by the Minister on behalf of the President, while the Acting Regent/Mayor is inaugurated by the Governor on behalf of the President. If the Governor is unable to do so, the inauguration can be carried out by the Deputy Governor or Minister.

Although Regulation of the Minister of Home Affairs Number 4 of 2023 aims to fill vacancies in regional head positions legally, this arrangement has raised criticism because the appointment process is centralistic and does not involve direct participation of the people. In fact, regional heads are actually elected by the people through a democratic process. This Regulation of the Minister of Home Affairs is considered to ignore the principle of people's sovereignty, especially because the appointment of acting officials is carried out entirely by the central government without involving the Regional People's Representative Council or the community. Article 5 Paragraph 1 and Article 10 Paragraph 1 stipulate that the Minister of Home Affairs conducts a discussion of acting candidates from the proposed proposals, without involving the Regional House of Representatives in the

process. This gives the impression that the representation and aspirations of the community are ignored in filling the position of regional head.

The regulation in the Regulation of the Minister of Home Affairs that requires the Minister of Home Affairs to discuss the acting candidate without involving the Regional House of Representatives at this stage can be considered a violation of the principle of people's representation in the political decision-making process in the regions. Although in some parts the Regulation of the Minister of Home Affairs provides space for the Regional People's Representative Council to propose candidates for officials, the reality is that the selection and discussion process does not involve community representation that should be present through the Regional People's Representative Council, every decision in the democratic system related to regional leaders must involve the participation of the people directly or through their representatives, in this case through the Regional People's Representative Council.

Overall, although Regulation of the Minister of Home Affairs Number 4 of 2023 provides a clear legal basis for the appointment of Acting Regional Heads in the context of the 2024 simultaneous regional elections, the existing mechanism still creates tension between the need to maintain the continuity of government and the principles of democracy and people's sovereignty. Long-term policies require a more in-depth evaluation to ensure that the implementation of local government still reflects the aspirations of the community and respects democratic principles. As a country of law that adheres to the principle of people's sovereignty, Indonesia must ensure that every policy taken upholds the participation of the people, both in the selection process of public officials and in the decision-making process concerning the future of the nation.

C. Duties and Authority of the Acting Governor/Regent/Mayor in Carrying Out Their Duties as a Substitute for The Regional Head Determined by The President on The Proposal of the Minister

Acting regional heads, be they governors, regents, or mayors, have an important role in maintaining the continuity of local government when there are vacancies.¹⁹ The appointment of this acting head departs from the need to ensure that the local government continues to run smoothly, even though the definitive regional head cannot hold office due to the postponement of the election or other reasons, within the legal framework, the appointment of acting regional heads is regulated in various laws and regulations, which provide a clear basis for the duties, authorities, and limitations possessed by the acting head. Law Number 10 of 2016, in Article 174 Paragraph 7, regulates the term of office of regional heads which lasts for 5 years, and in the event of a vacancy of office for 18 months, the president is authorized to appoint an acting governor, while the Minister of Home Affairs is responsible for appointing an acting regent or mayor. This underlines how important acting regional heads are in maintaining the continuity of local government and realizing stability at the local government level.

The appointment of acting regional heads has attributive authority. This means that this authority is given directly by law, which confirms that the central government has the right to determine who will replace the vacant regional head,²⁰ In its implementation, the task of

¹⁹ Dendy Derajat Utama, Didik Suhariyanto, and Puguh Aji Hari Setiawan, "Politik Hukum Pengisian Jabatan Gubernur Bupati Dan Walikota Sebagai Kepala Pemerintah Daerah," *Innovative: Journal Of Social Science Research* 3, no. 4 (2023): 7203–18.

²⁰ Utama, Suhariyanto, and Setiawan.

the Minister of Home Affairs is not only limited to submitting proposals for prospective officials, but also to ensure that the elected officials have adequate capabilities to carry out their duties properly. The Minister of Home Affairs, through a careful selection process and consideration, then proposed an acting candidate to the president to be designated as a legitimate official.

The appointment of acting regional heads also caused controversy, as was the case with the appointment of Major General of the Indonesian National Army (Retired) Achmad Marzuki as Acting Governor of Aceh. Although he had resigned from active duty in the Indonesian National Army prior to his inauguration, the decision raised various views regarding how much of an impact it would have on community engagement and regional aspirations. This appointment process, which is considered too centralistic, ignores the aspect of community participation and the involvement of the Regional House of Representatives in the proposal process. Although the Regional House of Representatives is involved in the proposal stage, they have no part in the discussion stage carried out by the Minister of Home Affairs. This gives the impression that the local government does not have enough space to channel the aspirations of the people represented by the Regional People's Representative Council.

The main task of the acting regional head is to ensure that the local government continues to run smoothly during the interim term of office.²¹ In Law Number 32 of 2014 concerning Regional Government, it is stated that regional heads have the duty to lead the implementation of local government affairs by prioritizing the principles of good governance such as legal certainty, openness, and accountability. Acting regional heads must also maintain public order, as well as carry out government duties related to regional development. The acting regional head in its implementation, is responsible for carrying out the affairs of the local government, by involving the regional apparatus and other institutions in the region.²²

Article 65 in Law Number 23 of 2014 concerning Regional Government explains that acting regional heads have duties that include drafting Regional Regulations, representing the regions in legal matters, and establishing strategic policies to continue regional development. Acting regional heads must also carry out moral and legal obligations, namely maintaining the sustainability of local government, fighting for regional interests, and carrying out their role as leaders who can be an example for the community.²³ As a temporary official, the acting regional head still holds the responsibility to ensure that the policies taken are in line with the planned regional development goals.

The authority of the acting regional head includes a number of things, such as submitting draft regional regulations, establishing regional head regulations, and taking emergency measures if necessary.²⁴ The acting regional head serves as a temporary replacement who has the authority to make important decisions at the regional level. However, this authority is still limited by the applicable laws and regulations. For example, Article 132A Paragraph (1) in Government Regulation Number 49 of 2008 stipulates that acting regional heads are

²¹ theresia Joan Rindengan, Telly Sumbu, And Donna Okthalia Setiabudhi, "Perbandingan Kewenangan Kepala Daerah Dan Penjabat Kepala Daerah Dalam Penyelenggaraan Otonomi Daerah," *Lex Privatum* 15, no. 2 (2025).

²² Rindengan, Sumbu, and Setiabudhi.

²³ Raihan Ardiansyah, Waluyo Waluyo, and Rosita Candrakirana, "Diskresi Dalam Pengangkatan Penjabat Kepala Daerah Dari Unsur Tni/Polri," *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 1, no. 3 (2023): 37-47.

²⁴ Yuli Kasmarani, "Analisis Yuridis Normatif Undang-Undang Pemilihan Kepala Daerah Tentang Pencalonan Mantan Pelaku Tindak Pidana Korupsi," *Ta'zir: Jurnal Hukum Pidana* 5, no. 2 (2021): 101-20.

not allowed to carry out employee mutations or make policies that are contrary to the previous policy of regional heads. This aims to avoid too profound policy changes that can disrupt the stability of local government.

In addition, acting regional heads also have the obligation to carry out their mandate as well as possible, maintain integrity, and always uphold the principles of good governance. Article 67 in Law Number 23 of 2014 emphasizes that acting regional heads must uphold Pancasila, implement the 1945 Constitution, and maintain the integrity of the Unitary State of the Republic of Indonesia. This indicates that even though acting regional heads are not directly elected by the people, they are still expected to carry out their duties with full responsibility in accordance with the values that apply in Indonesia.²⁵

The responsibilities of acting regional heads in running local government also include openness in making decisions, prioritizing accountability, and maintaining that every policy taken always prioritizes the interests of the community.²⁶ Therefore, even though acting regional heads are not elected through direct elections, they still have to maintain public trust and ensure that local government continues to run smoothly and effectively. The appointment process regulated in Regulation of the Minister of Home Affairs Number 4 of 2023 does provide clear guidelines regarding the implementation of the duties of acting regional heads, but it must be remembered that their main task is to maintain the continuity of local government, not to carry out long-term or in-depth policies that may only be decided by definitive regional heads.

The duties and authority of acting regional heads are very crucial in maintaining the continuity of local government and regional development. They are not only responsible for running local government, but also have to ensure that the governance process runs smoothly in accordance with applicable legal and governance principles. Despite the limitations and controversies in the appointment process, the acting regional head still has a very important role in maintaining the stability and continuity of local government until the definitive regional head is elected.

CONCLUSION

The regulation of Acting Governors, Regents, and Mayors in Indonesia is regulated in Article 201 Paragraphs 9-10 of Law Number 10 of 2016 and Regulation of the Minister of Home Affairs Number 4 of 2023. Article 201 Paragraphs 9-10 is the legal basis for the appointment of Acting Regional Heads, but the lack of clarity in the appointment mechanism triggered controversy in the community and lawsuits to the Constitutional Court. The Constitutional Court Decision Number 15/PUU-XX/2022 states that the article is in line with the principles of people's sovereignty and democracy, but requires further implementing rules. As a follow-up, the Government issued Regulation of the Minister of Home Affairs Number 4 of 2023. However, this regulation is considered to ignore the principle of the rule of law because the appointment of Acting Regional Heads is carried out by the Minister, not by the people or the local Regional People's Representative Council, which is contrary to the principle of people's sovereignty. The mechanism for appointing Acting Regional Heads in the Simultaneous Regional Elections is regulated in Regulation of the Minister of Home Affairs Number 4 of 2023, but this regulation does not include a

²⁵ Kasmarani.

²⁶ Ardiansyah, Waluyo, and Candrakirana, "Diskresi Dalam Pengangkatan Penjabat Kepala Daerah Dari Unsur Tni/Polri."

mechanism for the selection of acting candidates from the Regional People's Representative Council or Ministries. The absence of an announcement or introduction of an acting candidate ignores the principle of democracy, where the selection of public positions must be free and open. The Regulation of the Minister of Home Affairs only explains the requirements for candidates for Acting Regional Heads, without paying attention to the principle of freedom in democracy. The Acting Regional Head appointed by the Minister has attributive and delegative authority, as stipulated in Article 174 Paragraph 7 of Law Number 10 of 2016. The acting officer can carry out duties and authorities like the definitive Regional Head, but with limitations stipulated in relevant regulations, such as Article 132A Paragraph 1 of Government Regulation Number 49 of 2008 and Article 15 Paragraph 2 of Regulation of the Minister of Home Affairs Number 4 of 2023.

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