

Dynamics Towards the Appointment of Acting Regional Heads in Indonesia

Novia Widiyaningsih, S.IP || Roy Valiant Salomo

Faculty of Administrative Sciences, University of Indonesia

ABSTRACT: *The appointment of regional heads aims to fill the vacancy in regional heads due to the postponement of regional elections, which will be held simultaneously in 2024, causing problems in the implementation in Indonesia. These problems can be viewed from the accessibility of regional heads to unclear regulations, dynamics towards the appointment of acting regional heads determine the output of the performance of elected officials. This study discusses the dynamics of the process of appointment acting regional heads in Indonesia. This study aims to describe and analyze the process of appointing regional heads in Indonesia. The study method used secondary data and data from the literature review results. The secondary data was sourced from literature and elaborated on the official website of Statistics Indonesia and the Ministry of Home Affairs. In analyzing this study, several theories and concepts explain the process of constitutionally appointing the acting regional head and the accessibility/authority of the acting regional head. The research results show that the process of appointing the acting regional head has not gone well because the mechanism for the position of the acting regional head has been regulated. However, this mechanism is considered to have not been renewed and lacks credibility and openness from the center (top-down) in making good policies from the process of determining the position and requirements of the regional head government, which are deemed not in accordance with regulations and the absence of regulation on the certainty of financial rights for incumbents and replacements. The recommendations put forward are seen from political support, human resources, and policy evaluation.*

KEYWORDS: *Public Policy, Acting Regional Head, Government*

I. INTRODUCTION

1.1 Backgrounds

The state established simultaneous regional elections to be efficient from a budgetary perspective in implementing social, political, and governmental stability. In essence, the implementation of the Simultaneous Regional Head Elections in Indonesia will be held in 2027. However, in the end, the plan was changed to 2024. The simultaneous Regional Head Elections are regulated in Article 201 paragraphs (8), (9), (10), and (11) Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors. As a consequence of the cancellation of the simultaneous regional elections in 2024, namely the vacancy of the Regional Head position, which will expire in 2022 and 2023, the Regional Head whose term of office is less than 5 (five) years. Based on data obtained from the Ministry of Home Affairs, 101 Regional Heads and Deputy Regional Heads will end their term of office, namely Governors of 7 Provinces, Regents, 76 Regencies, and Mayors of 18 Cities. Whereas in 2023, there will be 170 Regional Heads and Deputy Regional Heads consisting of 17 Governors, 38 Mayors, and 115

Regents.

The vacancy of acting regional heads has forced the government to appoint acting governors from middle-high leadership positions. Meanwhile, to fill the vacancy in the position of Regent/Mayor, an acting Regent/Mayor is appointed from a high leadership position in accordance with statutory provisions. Furthermore, Article 201 paragraph (9) of the Law on Regional Elections states that the term of office of the acting regional head is 1 (one) year and can be extended for another year with the same/different person. Regional heads whose term of office ends in 2022 and 2023 are replaced by acting regional heads until the definitive regional head is installed from the results of the 2024 Regional Elections. The total term of office for several regional head appointments can reach 2.5 years or even more.

This was considered controversial, causing debate in the public. Apart from that, the appointment of the Indonesian National Armed Forces/National Police of the Republic of Indonesia, which are still active as acting regional heads, and the Interpretation of transparency and accountability in a democratic system. One of the important legal issues related to the appointment of acting Regional Heads is the absence of a Government Regulation as an implementing regulation of Article 201 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors. The absence of the intended Government Regulation ultimately led to widespread legal polemic; the Minister of Home Affairs issued Circular Letter Number 821/5492/SJ as the basis for a new policy because the powers of acting regional heads are limited. So far, to give sanctions to civil servants who break the law and transfer employees between regions, they must get the approval of the Minister of Home Affairs. Precisely this is contrary to several laws and prone to abuse of power (Djohermmansyah,2022).

Based on data from the Indonesian Ombudsman explaining that the mechanism for appointing Acting Regional Heads by the Ministry of Home Affairs has three maladministration practices related to the appointment mechanism, namely the Minister of Home Affairs is proven to have committed maladministration related to delays in responding to information and objections to reporting the appointment of regional head officials, the Minister of Home Affairs is proven to have committed maladministration in the form of procedural deviations in the appointment of regional head officials, the three Ministers of Home Affairs were proven guilty of administrating in the form of ignoring legal obligations for decisions of the constitutional court.

The appointment of regional head officials without a democratic mechanism also creates problems related to the legitimacy of these officials and the bureaucratic politicization found in regional elections. Regional bureaucracy is even very vulnerable to political power, so it becomes partisan. Recruitment of regional head officials from civil servants raises new problems. Based on the background above, the formulation of the problem in this study can be derived. The problem formulation was the process of appointing regional heads in Indonesia. In this case, through the formulation of the problem has been formulated, the purpose of this study is to describe and analyze the process of appointing regional head officials in Indonesia.

1.2 Research Methods

The author uses a qualitative method in this study by collecting secondary data from literature and literature studies. References for this study were sourced not only from books but also from other media such as e-books, official websites, and other media devices.

II. THEORITICAL FRAMEWORK

1.1. Regional Head Accessibility Theory

Filling state positions (staatsorganen, staatsambten) is an important element in state constitutional law. Without being filled with officials (ambtsdrager), the functions of state offices can't be carried out as they should. According to Bagir Manan, a permanent work environment that contains certain functions reflects an organization's goals and work procedures. The state contains various positions or permanent work

environments with various functions to achieve state goals. In other words, a position is a permanent work environment held and carried out for the benefit of the state.

Acting regional heads as public officials replacing regional heads as contained in the provisions of laws and regulations concerning regional government and provisions of laws and regulations concerning regional head elections. The basis for the appointment of the acting regional head (Pj) has been stated in Article 86 paragraph (5) of Law Number 23 of 2014 concerning Regional Government, in which regional heads and/or deputy regional heads are temporarily dismissed as referred to in Article 83 paragraph (1), the President stipulate acting governors on the recommendation of the Minister and the Minister stipulate acting regents/mayors on the recommendation of the governor as representatives of the Central Government until there is a court decision that has permanent legal force.

1.2. **Constitutionalism Principle**

The constitution is essentially the highest law and is the highest form of social agreement for all sovereign people in a country. In the constitution, various legal, political, and economic documents provide guidelines, directions, and instructions for a country. The constitution also contains the implementation of various centers of power so that there is certainty for implementing an effective and democratic government.

The constitution has a substance that contains fundamental agreements regarding the existence of a state and regulates various political organs within the state. It can be explained that the constitution regulates the power between state institutions, the relationship between state institutions and the community (citizens), and the protection and fulfillment of human rights (HAM). Recognition of the constitution as a basic law must direct and animate the birth of legal products oriented towards a system of legal certainty and benefits that contain justice for everyone. Still, constitutionalism is not a clear solution to serious problems. Even though, in reality, the constitution did not work well and could not eradicate poverty, racial discrimination, ethnicity, and other problems, especially those related to power (power tends to corrupt) by the power elite and the bureaucracy. Likewise, to assess and overcome the abuse of power, greed, and stupidity rather than the corrupt mentality of political leaders. The constitution is the basic law regulating the country's running principles.

The 1945 Constitution of the Republic of Indonesia is a state document that contains the main matters of state administration. Moh. Mahfud MD believes that basically, the constitution contains public authority which can only be legitimized according to constitutional provisions, the implementation of people's sovereignty (through representation) must be carried out using universal and equal suffrage principles, and the appointment of executives must be through democratic elections, there is separation or division of powers and restrictions on authority, the existence of an independent judiciary that can uphold law and justice both against the people and against those in power, there is a control system over the military and police to enforce the law and respect people's rights, there is a guarantee for the protection of human rights. In line with this, Western (European) countries, usually groups that rule as holders of power, tend to abuse their power. Moreover, power is accumulated in one hand or body, so there is a need for a separation of powers. Vice versa with the Constitution or the Basic Law, during the time the State of Medina already had a Constitution, namely the Constitution of Medina.

From the various definitions above, it can be concluded that constitutional principles can work well if they are oriented toward legal certainty and benefits that contain justice and transparency. The constitution is related to the legitimacy and representation of the people; the existence of a separation of powers will affect the provisions of authority and responsibility so that no one can abuse their power; those who implement decisions can establish clear and democratic communication supported by regulations and a control system to implement policies and the dispositions of implementers in carry out the policy properly. In this case, if viewed and analyzed, the implementation of the appointment of Acting Regional Heads must proceed according to constitutional principles that are democratic.

III. DISCUSSION

1.3. Position of Acting Regional Head

Simultaneous regional elections in 2024 will have implications for several regional heads whose terms of office will end in 2022 and 2023. This condition has implications for the potential for the emergence of acting regional heads who are not democratically elected. This is because the norms in Law Number 10 of 2016 legitimize the Minister of Home Affairs to appoint temporary officials. In fact, article 18 of the 1945 Constitution of the Republic of Indonesia states that all regional heads should be elected through a democratic mechanism. In addition, the duration of the term of office of the acting regional head can reach one term of office. This condition certainly has the potential to create new problems in the government system in Indonesia. Filling the vacancies for officials, as mentioned in the election of governors, regents, and mayors, to become law (stipulated on 01 July 2016), then according to the article, the total term of office for some acting regional heads (PKD) can reach 2.5 years or even more. Long-term duty. Thus seeing the legitimacy of PKD in the perspective of democracy explained by David Easton (in Alonso, 2011: 80). Legitimacy is the belief of community members who obey and accept the various policies made and that the authorities have fulfilled their rights.

The government seeks to gain and maintain legitimacy from the community, and conversely, the community provides legitimacy to leaders by looking at what policies and expectations are given to the community. So, it can be explained that legitimacy is the acceptance and acknowledgment of society towards the authority and power of leaders to govern, make and implement political decisions. A leader's legitimacy will be obtained when he has carried out what is the right of citizens.

The appointment of the Acting Regional Head by the Minister of Home Affairs (Mendagri) Tito Karnavian, who appointed a TNI who was still active as an acting regional head, temporarily raised pros and cons from the public. This certainly violated reforms to restore the TNI's functions.

This polemic shows that there is no openness in the process of appointing acting regional heads other than the term of office of PJ KDH of 2.5 years and even more resulting in limited regional government management authority so that the regional government hampers regulatory or operational matters and are not transparent, low political legitimacy so that it has an impact on the effectiveness of the implementation local government. However, the government has carried out the provisions of acting regional heads based on Government Regulation 6 of 2005 concerning the Election, Approval of the Appointment, and Dismissal of Regional Heads and Deputy Regional Heads (stipulated on October 11, 2005). /Mayor. The term of office of the Acting Regional Head is no longer than 1 (one) year, the Acting Governor's accountability report is submitted to the President through the Minister of Home Affairs, and for Acting Regents/Mayors, it is submitted to the Minister of Home Affairs through the Governor for at least 3 (Three) months. The Minister of Home Affairs evaluates the implementation of the duties of the Acting Regional Head.

Based on Article 65 of Law Number 23 of 2014 concerning Regional Government, it is emphasized that the official who is given the attribution of authority to carry out the duties of the regional head is serving a period of detention or is temporarily unavailable, and there is no deputy regional head is the regional secretariat. This places the Sekda in a strategic position so that the appointment must come from an official who has had track record experience supporting the position of regional secretary, suitability of competencies and qualifications.

The duties and functions, as stipulated in these rules, show the maximum ability and competence of the regional secretariat to be equipped to carry out its duties and functions as an apparatus that provides the best service to the public in its territory, coordinates each work unit of its regional apparatus (SKPD), maintains authority and implements every instruction from his superiors (head of government), regulates good relations and cooperation with stakeholders (stakeholders), especially the Regional Legislative Council, as well as other elite elements. The ability and competence of the Regional Secretariat will be reflected in the performance in developing the region, both in terms of the prosperity and welfare of the region and the ability of the apparatus to provide the best service to the public in this era of regional autonomy.

If the appointment of a regional head is not an old person, it will be difficult for him to continue the duties of the previous regional head, and if the local secretary continues this, it will be easier for him to carry out regional development. However, this will also cause problems where local governments will be more easily born in the regions, so the central government chooses to determine the regional heads themselves, who are elected and approved by the President and appointed by the Ministry of Home Affairs, which is in accordance with Law Number 10 concerning governor elections, regents, and mayors become law (then in accordance with article 201 paragraph 5 that the Acting Governor, Acting Regent, and Acting Mayor are appointed until the election of the Governor and Deputy Governor, Regent, and Deputy Regent, as well as the Mayor and Deputy Mayor through simultaneous national elections on 2024. However, the regulations related to the mechanism for appointing regional heads are considered not in accordance with the policies taken by the government, so many parties hope that the government will immediately make regulations regarding the appointment of regional heads.

1.4. Provisions for Appointment of Acting Regional Heads

Provisions for the appointment of acting regional heads are related to the mechanism for dismissing regional heads and deputy regional heads based on court decisions that have permanent legal force. As for several factors behind the dismissal, among others, the regional head and deputy regional head have been charged with committing crimes involving threatened with imprisonment of at least 5 (five) years, criminal acts of corruption, terrorism, treason, crimes against state security, and other acts that can divide the Unitary State of the Republic of Indonesia. KDH officials have the same duties and authorities as KDH (Article 65 paragraph (1) and paragraph (2) of Law 23 of 2014 concerning Regional Government, stipulated on September 30, 2014), but there are limitations to the authority of the Acting KDH because their existence is based on appointment, not election results. Limitation of the authority of the Acting KDH because of its existence based on the appointment stipulated in Article 132 A paragraph (1) and paragraph (2) PP Number 49 of 2008 concerning the Third Amendment to Government Regulation Number 6 of 2005 concerning Elections, Ratification of Appointments and Dismissals of Regional Heads and Deputy Head of Region (stipulated on July 4, 2008), i.e., Conducting employee transfers, Canceling permits issued by previous officials and/or issuing permits that conflict with those issued by previous officials, Making policies regarding regional expansion that are contrary to the policies of previous officials, and making policies that contrary to government administration policies and development programs of previous officials.

1.5. Requirements and Authorities of Acting Regional Heads

Acting status as Head of Region (Governor, Regent/Mayor) Temporary to carry out government duties for the stability of community services and government administration activities. In accordance with Law Number 10 of 2016 (Article 201 paragraph (8), paragraph (9), paragraph (10), and paragraph (11) concerning requirements for acting regional heads to simultaneous voting in the Election of Governor and Deputy Governor, Regent, and Deputy Regent, as well as Mayors and Deputy Mayors throughout the territory of the Unitary State of the Republic of Indonesia held in February 2024.

The Acting Governor comes from an intermediate-high leadership position. The Acting Regent/Mayor comes from a high leadership position. In line with Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia explicitly states that Governors, Regents, and Mayors, respectively as heads of

provincial, regency, and city regional governments, are elected democratically, in the sense of the process of appointing Acting Regional Heads resulting from the implementation of simultaneous elections must be carried out democratically. Some of them served up to one term or even more.

Based on the term of office of the Acting Regional Head as referred to in paragraph (1), a maximum of 1 (one) year (Article 132 Paragraph 4 PP Number 6 of 2005). The term of office for the Acting Governor, acting Regent, and acting Mayor is 1 (one) year. It can be extended for another 1 (one) year with the same/different person (Explanation of Article 201 Paragraph (9) of Law Number 10 of 2016). The Ministry of Home Affairs will carry out Supervision and evaluation of the implementation of the duties of the Acting Regional Head as referred to in paragraph (5); an evaluation (Supervision) of Supervision of the duties of the Acting Regional Head will generally be carried out by the Minister of Home Affairs, and technical affairs carried out by the relevant Technical Minister. (juridical analysis based on Law Number 23 of 2014). Meanwhile, the limitation of authority, as referred to above, can be waived after obtaining written approval from the Minister of Home Affairs. In addition, based on Law no. 23 of 2014 concerning Regional Government PP number 49 of 2008 (Article 132 A) states various prohibitions for Acting regional heads to transfer employees, cancel permits issued by previous officials, and/or issue permits that conflict with permits issued by previous officials makes regional expansion policies that conflict with previous official policies and create policies that conflict with government administration policies and development programs of previous officials.

The current factual condition is the impact of the Constitutional Court's decision Number 14/PUU-XI/2013 Law Number 42 of 2008 concerning the General Elections on January 23, 2014, the implementation of which is not specifically regulated in regulations, so a strategic policy is needed in its implementation. In addition, the availability of officials Pratama high leadership and middle high leadership in government ministries/agencies and provinces.

Filling KDH Officers who are carried out without a democratic mechanism also creates problems related to the Legitimacy of these Officials. This is because there is a clause in the constitution that states that regional heads should be democratically elected in accordance with the Kjellberg Concept of democratic government, which states that the ideology of government is seen from democracy and participation and efficiency where democracy at the local level means that public participation is seen not only as a goal but also an instrument to strengthen democracy as a whole. Local government should enjoy a degree of autonomy and self-governance free from central government control. There is a potential for a decline in democracy as an implication of filling in temporary Acting by the Central Government in implementing the 2024 Simultaneous Elections.

The appointment of an Acting carried out without a democratic mechanism also creates problems related to the Legitimacy of the Acting. This is because there is a clause in the constitution that states that regional heads should be democratically elected. So according to Heywood's view, legitimacy should be achieved with clear regulations and mutual agreement from policymakers and the public. Meanwhile, Coicaud (2013) straightforwardly interprets legitimacy as an acknowledgment of the right to govern (right to govern). In a democracy, political legitimacy comes from the people, the people who are governed. The legitimate and legitimate government only if it obtains approval from the governed. Consent has implications for the obligation to comply (obey). Political legitimacy for the government becomes a context that influences democracy because political legitimacy is a reason for people to obey the government due to the approval given. Governments that do not go through the mechanism of popular consent do not have the moral right to rule so the people do not have a moral obligation to obey. In addition, political legitimacy provides a moral foundation for the government to issue legally binding policies.

The power that develops based on and departs from internal values that arise from and are often conventional, and a leader has the right to influence his subordinates. Meanwhile, on the other hand, a person should accept this influence because someone else is determined as his leader or superior while he is a subordinate. Thus the process of appointing acting regional heads determines the output or quality of the performance of the elected officials and restores public confidence in the implementation of the 2024

simultaneous elections.

IV. RECOMMENDATIONS

The author generally explains the dynamics of appointing regional heads, explaining the provisions, positions, conditions, and powers of acting regional heads. The appointment of acting regional heads has not gone well because even though the mechanism for the position of acting regional heads has been regulated, the mechanism is considered to have not been updated, it lacks credibility and openness from the center (top-down) in making policies both from the process of determining the position and the requirements of the regional head government which are considered not in accordance with the regulations, and there is no regulation on the certainty of financial rights for the acting and acting substitutes. Based on the conclusions described above, recommendations can be given in implementing the policy of appointing regional heads as support in vacant regional positions as follows:

1. For political support, it is necessary to develop democratic governance, and the involvement of the DPRD and the community is reflected in the 'recruitment' of heads of government and members of representatives (DPR/DPD/DPRD) as well as ways of making decisions relating to the public interest by institutions that are given the authority and duties to interests are intended so that political aspects do not harm democracy itself. So as to promote the welfare of society;
2. There is a need for a policy of the Minister of Home Affairs that basically states that in the context of efficiency and effectiveness of government administration guaranteeing public services, the requirements for an Act coming from the Regional Secretary are the same as those for other Officials so that there is no concern for the Regional Secretary not being able to return to his original position;
3. There is a need for human resource support in terms of improving the quality and professionalism of regional apparatuses and regulations regarding the authority of acting regional heads that have been regulated, both from finance and regional potential;
4. There needs to be public openness involving the community in appointing acting regional heads by involving the Regional Legislative Council

References

Regulations

- [1.] Law Number 23 of 2014 concerning Regional Government;
- [2.] Law number 10 of 2016 concerning the election of governors, regents/mayors (article 201 paragraph (9), paragraph (10) and paragraph (11)
- [3.] Law Number 5 of 2014 concerning ASN (Article 19 paragraph (1)
- [4.] PP number 6 of 2005 concerning the election, ratification, and dismissal of regional heads and deputy regional heads (Article 132)
- [5.] PP Number 49 of 2008 the third amendment to PP number 6 of 2005
- [6.] (Article 131 paragraph (4) and Article 132 A)
- [7.] Permendagri 120 of 2018 concerning Amendments to Permendagri 80 of 2015 concerning Formation of Regional Legal Products (Article 1 Number 27)

Books and Journals

- [8.] Budiardjo, M. (2008). *Dasar-Dasar Ilmu Politik*. Jakarta: Gramedia PustakaUtama.
- [9.] Efendi, A. dan Freddy Poernomo. (2017). *Hukum Administrasi*. Jakarta: SinarGrafika.
- [10.] HR, Ridwan. (2014). *Hukum Administrasi Negara*. Jakarta: Rajawali PersJenkins, H. (2008). *Convergence Culture: Where Old and New Media*

- [11.] Collide. New York: University Press McLuhan, M. (2002). *Understanding Media :the Extensions of Man*. London:Routledge
- [12.] Moh. Mahfud MD, *Demokrasi dan Konstitusi Indonesia : Studi tentang Interaksi Politik dan Kehidupan Ketatanegaraan*. Jakarta: Rineka Cipta, 2000, hlm. 421.
- [13.] Ryaas, Rasyid.(2000). *Otonomi Daerah Dalam Kesatuan*, Yogyakarta: Pustaka Pelajar. Ryaas, Rasyid.(2000). *Makna Pemerintahan, Tinjauan Dari Segi Etika Dan Kepemimpinan*, Jakarta : Mutiara Sumber Widya.
- [14.] Siagian, Sondang P. (1994). *Administrasi Pembangunan*, Jakarta: CV. Haji Masagung. Siagian, Sondang P. (2003). *Manajemen Sumber Daya Manusia*, Jakarta : Bumi Aksara Soekanto,
- [15.] Soerjono.(2015). *Sosiologi Suatu Pengantar*, Jakarta : PT. Raja Grafindo Persada. Subarsono, AG. (2005). *Analisis Kebijakan Publik*, Yogyakarta : Pustaka Pelajar.
- [16.] Sugiyono.(2013). *Metode Penelitian Pendidikan*, Bandung : Alfabeta. Widodo, Joko.(2008). *Analisis Kebijakan Publik*, Malang : Bayumedia. Winarno, Budi. (2002). *Teori dan Proses Kebijakan Publik*, Yogyakarta: Media Pressindo.
- [17.] Vita Elysia, Ake Wihadanto, S. (2017). *Implementasi E- Government Untuk Mendorong Pelayanan Publik Yag Terintegrasi di Indonesia. Optimalisasi Peran Sains Dan Teknologi Untuk Mewujudkan Smart City*, 353- 380.

Website

- [18.] <https://www.cnnindonesia.com/nasional/20220523062951-32-799858/pro-kontra-pj-kepala-daerah-ditunjuk-langsung-presiden-dan-menteri> (**diakses 16 Desember2022**)
- [19.] <https://dairikab.bps.go.id/backend/images/Indeks-Pembangunan-Manusia-Kabupaten-Dairi-2021-ind.png> (**diakses 16 Desember 2022**)
<https://www.researchgate.net/publication/330411761> Pelaksanaan Pemilu van g Aksesibel dan Non-Diskriminasi Sebagai Upaya Pemenuhan Hak-Hak Politik Penyandang Disabilitas */(diakses 16 desember 2022)*