

Constitutionality of Appointment of Acting Regional Heads in Constitutional Court Judgment

Ahmad Siboy

Universitas Islam Malang, Indonesia

siboysalman@unisma.ac.id

Muhammad Nur

Lancaster University, United Kingdom

a.nur@lancaster.ac.uk

DOI: 10.23917/jurisprudence.v13i2.2794

Submission

ABSTRACT

Track:

Received:

November 4, 2023

Final Revision:

December 11, 2023

Available online:

December 28, 2023

Corresponding

Author:

Ahmad Siboy

siboysalman@unisma.ac.id

Purpose of the study: This research aimed to describe the *ratio decendi* of the Constitutional Court's judgment in terms of judicial review regarding the appointment of acting regional heads and its implications on the meaning of sovereignty in its implementation.

Methodology: This research is normative legal research because it is based on the Constitutional Court Judgment Number 67/PUU-XIX/2021. The approaches used are the statutory regulations approach, the judge's decision approach, the conceptual approach, the case approach, and the philosophical approach.

Results: The Constitutional Court stated that the appointment of acting regional heads as a result of the postponement of the Pilkada was a legal policy chosen by the legislators (People's Representative Council and President) which qualified as a constitutional legal alternative considering that the delay of the Pilkada had no impact on reducing the right to vote and the right to be candidate.

Applications of this study: This research can be used to develop courses in general election law and regional head elections, especially in understanding how the Constitutional Court considers a decision. Apart from that, this research can also be used as a consideration in efforts to change the law regarding regional elections or can also be used as additional evidence if another judicial review of the regulations regarding the postponement of regional elections.

Novelty/ Originality of this study: There has been no previous research that specifically analyzes the Constitutional Court's judgment regarding the appointment of acting regional heads in terms of the legitimacy of the meaning of popular sovereignty and its implications for the practice of appointing acting regional heads. The legitimacy of the appointment of acting regional heads in the Constitutional Court's judgment is an

interpretation that has degraded the challenge of the meaning or position of regional heads, in which the status has experienced shifting in meaning from a political position to a career position. As a result, the people's right to determine their own regional heads is taken over by the central government. The shift from the people's right to choose to the right of the President and Ministers to appoint regional heads is a shift that leads to a shift in sovereignty, namely, from the sovereignty of the people to the sovereignty of the ruler.

Keywords: *Regional head, Ratio decidendi, Popular sovereignty.*

ABSTRAK

Tujuan: Penelitian ini bertujuan untuk menguraikan *ratio decidendi* putusan MK dalam hal uji materi tentang penunjukkan penjabat kepala daerah serta implikasinya terhadap makna kedaulatan rakyat dalam implementasi penunjukkan kepala daerah.

Metodologi: Penelitian ini termasuk dalam jenis penelitian yuridis normatif karena berpijak pada putusan Mahkamah Konstitusi Nomor 67/PUU-XIX/2021. Pendekatan yang digunakan adalah pendekatan peraturan perundang-undangan, pendekatan putusan hakim, pendekatan konsep, pendekatan kasus dan pendekatan filosofis.

Temuan: Mahkamah Konstitusi menyatakan bahwa penunjukkan penjabat kepala daerah sebagai akibat dari penundaan penyelenggaraan Pilkada merupakan politik hukum yang dipilih pembentuk undang-undang (DPR dan Presiden) yang terkualifikasi sebagai pilihan hukum yang konstitusional mengingat penundaan Pilkada tersebut tidak berdampak terhadap pengurangan hak untuk dipilih (*right to vote*) dan hak untuk memilih (*right to be candidate*).

Kegunaan: Penelitian ini dapat dimanfaatkan bagi pengembangan mata kuliah hukum pemilihan umum dan pemilihan kepala daerah khususnya hal mengetahui bagaimana MK membuat pertimbangan dalam suatu putusan. Disamping itu, penelitian ini juga dapat dijadikan pertimbangan dalam upaya perubahan undang-undang tentang Pilkada atau dapat pula dijadikan sebagai tambahan dalil apabila akan dilakukan uji materi lagi terhadap aturan tentang penundaan Pilkada.

Kebaruhan/Orisinalitas: Belum terdapat penelitian terdahulu yang menganalisis secara khusus putusan Mahkamah Konstitusi tentang penunjukkan penjabat kepala daerah dari sisi legitimasi makna kedaulatan rakyat dan implikasinya dalam praktek penunjukkan penjabat kepala daerah. Legitimasi penunjukkan penjabat kepala daerah dalam putusan Mahkamah konstitusi merupakan tafsir yang telah mereduksi tantangan makna atau kedudukan kepala daerah dimana kedudukan kepala daerah mengalami pergeseran makna dari jabatan politis menjadi jabatan karir. Akibatnya, hak rakyat untuk menentukan sendiri kepala daerahnya diambil alih oleh pemerintah pusat. Pergeseran hak untuk memilih dari rakyat secara langsung menjadi

hak Presiden dan Menteri dalam hal penunjukkan kepala daerah merupakan pergeseran yang menyebabkan terjadinya peralihan kedaulatan. Yakni, dari kedaulatan rakyat menjadi kedaulatan penguasa.

Keywords: *Penjabat kepala daerah, ratio decidendi, Kedaulatan Rakyat.*

INTRODUCTION

To achieve a simultaneous Regional Head Election (hereafter abbreviated as *Pilkada/Pemilu Kepala Daerah*) in 2024, the said election that should have been held in 2022 and 2023 was canceled or merged with the same election in 2024 (Siboy, 2023). As a result, there was the absence of regional heads including 7 Governors, 76 Regents, and 18 Mayors in 2022 and it reached 17 Governors, 115 Regents, and 38 Mayors in 2023. The *Pilkada* in 2022 and 2023 will be halted to realize a simultaneous Regional Head Election in 2024 (Assyayuti, 2022).

Substituting the position of the regional head during the transition period is exercised through appointing acting regional heads. This legal political choice is strictly regulated in Article 201 of Act Number 10 of 2016 on the Election of Governor, Regent, and Mayor which stipulates filling the empty post of the Governor and Vice Governor, Regent and Vice Regent, as well as Mayor and Vice Mayor whose terms expired office in 2022 and whose term of office ends in 2023, by appointing acting Governor, acting Regent, and acting Mayor until the election of the Governor and Vice Governor, Regent, and Vice Regent, as well as Mayor and Vice Mayor will simultaneous regional elections in 2024 (Kumolo, 2015).

The authority to appoint the acting Regent and Mayor is given to the Minister of Home Affairs (MOHA), while the acting Governor is under the President's authority (Faisyah, Sudarsono, Hadiyantina, & Amir, 2023).

The provisions regarding the appointment of acting regional heads as regulated in Article 201 of Law 10 of 2016 were then requested for a judicial review by Bartolomeus Mirip and Makbul Mubarak. The petitioners essentially stated that they were treated in a discriminatory manner because the value of their choice was assessed differently from other regions, of which the elected regional head legally serves office for 5 (five) years. In contrast, in the 2020 *Pilkada*, the regional head will only serve a maximum of 4 (four) years.

The application submitted by Bartolomeus Mirip and Makbul Mubarak was then dismissed by the Constitutional Court stating: "to substitute the vacancy of Governor and Vice Governor, Regent, and

Vice Regent, as well as Mayor and Vice Mayor whose 33 terms of office have ended in 2022 and 2023, the acting governor/regent/mayor will be appointed until the election of the Governor and Vice Governor, Regent and Vice Regent, as well as Mayor and Vice Mayor, based on the results of the simultaneous national regional elections in 2024. For this reason, it has been determined that the appointment of the Acting Governor will be the authority of those senior associate officials, while the Acting Regent or Mayor comes from primary high leadership positions (Constitutional Court, 2021); "Senior associate officials is a High Leadership Position in a provincial government, while primary high leadership is a High Leadership Position at Regency/City level. Senior associate officers consist of secretary general of ministries, secretary of ministries, principal secretary, secretary general of state secretariats, secretary general of non-structural institutions, director general, vice, inspector general, principal inspector, head of agency, expert staff of ministers, head of the presidential secretariat, head of vice president's secretariat, military secretary of president, head of Secretary of Presidential Advisory Council Member, secretary of provincial governments, and other equivalent positions. Meanwhile, primary high leadership positions consist of a director, head of bureau, vice of deputy, secretary of the directorate general, secretary of the inspectorate general, secretary of the head of agency, head of center, inspector, head of the main station, assistant of the provincial secretariat, secretary of the regency/city, head of the agency/head of a provincial agency, secretary of the Regional Legislative Council, and other equivalent positions (Government of the Republic of Indonesia, 2014a).

The Constitutional Court's considerations are certainly those of delegitimizing the meaning of democracy (Constitutional Court, 2021). This is because democracy in assigning a vacant regional head is the democracy of elections, not how a law is formed (Iswari, 2020). The difference is that democracy in elections involves all the people electing people who will represent them in administration office or power (Arifulloh, 2015). Meanwhile, democracy in lawmaking focuses more on agreements among legislators or between legislative institutions and executive institutions, hence laws are not a representation of the people although they are formed by institutions of which officials are directly elected by the people (Constitutional Court, 2021).

Simultaneously, appointing acting regional heads is according to obvious implementing regulations. Vague Implementing Regulation is the absence of regulations that function to implement Article 201 of Act Number 10 of 2016 on Regional Elections, in which no Government Regulation is yet to refer even if to implement a law, implementing regulations are required which can be in Government Regulations (Government of the Republic of Indonesia, 1945b). Consequently, the appointment process results in polemics and even rejection from several governors because the assigned regional heads cannot comply with regional recommendations, as in the case in North Maluku Province.

This implies that the name appointed by the Minister of Home Affairs is different from the name proposed by the Governor to be appointed as acting regional head.

When regions and society mostly feel disadvantaged by the decisions of the Minister of Home Affairs and the President, the people are not provided with legal protection to submit legal remedies or lawsuits to judicial institutions so that the arbitrary appointment of regional heads cannot be repealed through the due process of law mechanism even though in the state law system and constitutional democracy require each government decision or policy to be able to be challenged through a judicial mechanism as a form of repressive protection for people seeking justice. The administrative justice process through the State Administrative Court cannot be pursued by those seeking justice since a lawsuit over the Judgment to Appoint an Acting Regional Head can only be carried out by the appointed Acting Regional Head. Meanwhile, dominantly people do not have legal standing given that there is no direct and concrete loss suffered by the people (Siboy, Al-Fatih, Triasari, & Tegnan, 2023).

Not only that, the acting regional head is also a monopoly right of the state civil apparatus and Indonesian National Armed Forces/National Police considering that those who can occupy such status are Senior Associate Officials (SAO) and Primary High Leadership Positions (PHLPP) despite the head of Regional positions being political positions rather than career/professional level. Besides, the authority of the acting regional head is not strictly regulated, thus confusing as to whether the acting regional head has authority similar to or identical authority of the definitive regional head or is different in nature (Kurnia & Rizari, 2019). Therefore, this research departs from the formulation of the problem regarding the *ratio decidendi* and the implications of the Constitutional Court judgment regarding the constitutionality of the appointment of acting regional heads through decision Number PMK 67/PUU-XIX/2021.

RESEARCH METHOD

This research is normative legal research, studying material from the Constitutional Court Judgment Number PMK 67/PUU-XIX/2021 and Article 201 of Act Number 10 of 2016 on the Election of Governor, Regent, and Mayor. The research approaches used are the statutory regulations/judicial decisions approach, the concept approach, and the case approach (Fatih, 2023). The legal materials were obtained through an online search process and in-depth discussions which were later grouped into primary, secondary, and tertiary legal materials. Meanwhile, the analysis pattern used is descriptive and prescriptive. Descriptive analysis is to describe the dynamics of the appointment of acting regional heads which is associated with various literature such as expert opinions, statutory provisions, and so on.

Meanwhile, prescriptive analysis is an analysis that examines the appointment of acting regional heads from the proper legal perspective or the perspective of legal values so that the real meaning/implications (right and wrong) of the appointment of acting regional heads can be found.

RESULTS & DISCUSSION

Ratio Decidendi of Constitutional Court Judgment Concerning the Appointment of Acting Regional Heads

The Regional Head is a very strategic position. The regional head is the leader of government at the provincial level and regency/municipality level. Province and regency/municipality are part of a country's territory. As is known, every country can divide/separate its country into several parts.

Indonesia is a unitary country that divides its territory into three levels; the central government area covers the entire territory of Indonesia, the provincial area includes regencies/cities, and the regencies/cities is the area that oversees sub-districts. Each regional level is spearheaded by the head of region. The government system in Indonesia also applies in England. England is a unitary country that implements a decentralized system with regional government powers vested in the Council elected by the people of the region (Muldoon-Smith & Sandford, 2023). To sum up, England and Indonesia share a similar form which includes the same form as a unitary country as well as a country that implements a decentralized system with regional areas.

The difference is, in Indonesia, a region is led by a head of regional. In contrast, England is run by a Council elected by the people. Thus, the decentralization systems that apply in Indonesia and England are both piloted by separate governments in each region, yet each region is connected/bound to the central government despite the regional council or regional head being elected directly by the people. For that reason, the position of regional governments in England and Indonesia to spearhead should continue as per usual so that the election process can be carried out on a scheduled basis.

However, in Indonesia, there is a specific circumstance where regional head elections cannot be held on the normal schedule of once every five years. The regional head elections have been postponed until 2024. As a result, there are vacancies in regional head offices considering that many regional heads will end their term before 2024.

The vacancy of regional head and vice regional head is perceived as unfavorable for a government (Kusuma, 2022). It is because a power vacuum will prompt, firstly, obstruction of government. The vacant regional head will ensure direct impact on the running of government. The running government will most likely stagnate without a regional head. This occurs because a regional head is the leader of government or the highest authority in an area. The head of the region holds controls

and policies regarding regional activities. This situation will become severe when an event occurs unexpectedly or is a situation that requires discretion from a regional head. Discretion is a decision that must be made by a head regarding an abrupt event such as diverting the budget to overcome natural disasters and others (Kurniawaty, 2016).

The second is budget. In the absence of a regional head, budget stagnation will automatically occur considering that the Local Government Budget (known as *Anggaran Pendapatan dan Belanja Daerah/APBD*) is prepared and approved in conjunction with the regional head and the Regional Legislative Council (Government of the Republic of Indonesia, 2014b). This denotes that if the head of the region is vacant, APBD cannot automatically be prepared and ratified taking into account that the status of the head of region cannot be represented or replaced by other officials (Yuliastati, 2017).

Based on the implications of the absence of a regional head, one of the solutions that can be adopted in substituting the seat due to the postponement of the regional elections is the appointment of an acting regional head (Huda, 2021). The acting regional head will occupy the office until the completion of the 2024 election. This provision is based on Article 201 of Act Number 10 of 2016 on the Election of Governor, Regent, and Mayor:

- a. Article 201 paragraph (8) simultaneous national election of Governor and Vice Governor, Regent and Vice Regent, and Mayor and Vice Mayor throughout the territory of the Unitary State of the Republic of Indonesia will be held in November 2024;
- b. Article 201 (9) to fill the vacancy of Governor and Vice Governor, Regent and Vice Regent, as well as Mayor and Vice Mayor whose term of office expires in 2022 as intended in section (3) and whose term of office expires in 2023 as intended in section (5), acting Governor, acting Regent, and acting Mayor shall be appointed until the election of the Governor and Vice Governor, Regent and Vice Regent, and Mayor and Vice Mayor through simultaneous national elections in 2024.

This article was appealed for a judicial review by the Constitutional Court by Bartolomeus Mirip and Makbul Mubarak through attorneys Ahmad Irawan, S.H., and Zain Maulana Husein. However, the request for judicial review was dismissed by the Constitutional Court through judgment Number 67/PUU-XIX/2021. The considerations of the constitutional judge are outlined as follows:

1. The arrangements for the acting Governor/Regent/Mayor to fill the vacancy in the position of regional head whose election has been postponed until the simultaneous national elections in 2024 have been regulated in Article 201 from Section (9) to Section (11) of Law 10/2016.

- Based on the status quo, the appointment of the substitution of Governor and Vice Governor, Regent and Vice Regent, as well as Mayor and Vice Mayor whose terms of office have ended in 2022 and 2023, acting governor/regent/mayor will be appointed until the election of the Governor and Vice Governor, Regent and Vice Regent, as well as Mayor and Vice Mayor based on the results of the simultaneous national elections in 2024. Consequently, it has been determined that the appointment of the Acting Governor will be approved by senior associate officers, while the Acting Regent or Mayor will come from primary high leadership positions;
2. In the current era of regional autonomy, the authority of regional head is significant in government decision-making so regional heads hold a central role and position in developing their region. The leadership of regional heads in the bureaucracy plays a role in creating strong governance to realize social welfare. Therefore, the success of a regional government in carrying out its duties is largely influenced by its leaders. In the universal doctrine of constitutional law, appointing state positions is an essential element in constitutional law and state administration. In the absence of a head in the office, the function cannot be exercised. Therefore, inaugurating the vacant regional head is a necessity to ensure the fulfillment of public services and the achievement of community welfare in the region;
 3. Regulations regarding the appointment of acting regional heads are part of transitional provisions that contain adjustments to prevailing legal action arrangements or legal relations based on old laws and regulations, in particular regulations regarding the schedule of simultaneous national elections which were originally determined in 2027 are changed to 2024. The regulation of norms in such transitional provisions follows Point 127 of Attachment II to Act Number 12 of 2011 on the Establishment of Legislation;
 4. The appointment of regional heads is an effort to adjust the stages of simultaneous national elections so that some regional elections are postponed and some regions hold regional elections in advance. In a transitional period, there will inevitably be a delay in the fulfillment of citizens' right to vote and the right to be a candidate in the regional elections. However, the Court assessed that the postponement of serving citizens' rights does not annul their rights and is per the concept of limiting rights as regulated in the provisions of Article 28J Section (2) of the 1945 Constitution.
 5. Whereas in a limited sense, legitimacy means obtaining direct support from voters. From a broad perspective, legitimacy can be obtained from laws made by the legislative council which are the people's representatives. Thus, filling an acting regional head is necessary during the transitional period, and as far as the official appointed meets the qualifications required by law and whose performance can be evaluated by the authorized official at any time given and be

replaced if deemed necessary as he cannot provide public services, the Court opines that appointing the acting regional head is justified (Constitutional Court, 2021).

6. Whereas concerning the appointment of vacant regional head to occupy the office, the Court needs to emphasize that the process is still within the scope of "democratic" as regulated in Article 18 Section (4) of the 1945 Constitution. Therefore, it is pivotal for the government to consider and address the issue of implementing regulations as a follow-up to Article 201 of Law 10/2016, thus measurable and clear mechanisms and requirements are available. Consequently, the appointment of officials does not abandon the democracy principle and simultaneously assures the public that the mechanism is open, transparent, and accountable to create leaders who are competent, have integrity, correspond to regional aspirations, and work truthfully for the people and regional progress.
7. Considering the central role of the regional head and vice regional head and the tenure of the regional head, it is crucial to accord the acting regional head similar authority during the transition period towards simultaneous national elections as the definitive regional head. That is, with the full authority of the appointed acting regional head, accelerated development of regional development can be achieved without any disparity between regions led by acting regional heads and those who are definitive (Constitutional Court, 2021).

The Constitutional Court's decision has concurrently caused a degradation in the meaning of the regional head (Hsb, 2016). The regional head is a political position, not a career one. Political positions and career positions are two different situations (Charity, 2016). The regional head is included in the political strategy category because:

- a. Regional Head is elected in a democratic manner according to Article 18 Section (4) of the 1945 Constitution of the Republic of Indonesia. Appointing positions held through general elections is for political positions such as President/Vice President and legislative members whose process also undergoes general elections;
- b. The regional head is placed as a political status because the term of office of the regional head is limited by period, not age. The position of the regional head is valid every period under the periodization of the regional head election. If the regional head is not a political one, the term of office does not depend on the election period or may apply based on the retirement age as is the status of the State Civil Apparatus in general.
- c. The regional head is also placed in a political position because anyone who wishes to be a regional head cannot bear State Civil Apparatus status. This implies that if the State Civil Apparatus is to run as a candidate for regional head, then he is obliged to resign from the current

status. The provision of resignation in order to become regional head is regulated in Article 123 Section (3) of Act Number 5 of 2014 on State Civil Apparatus. For instance, the Mayor of Surabaya (Eri Cahyadi) is a member of the Surabaya City government. However, as he wanted to run for Mayor of Surabaya in the election on 9 December 2020, he first resigned from his status and then registered as a candidate for regional head through (PDIP).

Nevertheless, with the assigning of an acting regional head, there has automatically been a shift in the meaning of the regional head (Hadita, 2021); from political status to career position (Sudrajat, 2014). The reason is that appointing the acting regional head by Senior Associate Officers and Primary High Leadership Positions directly implies the position of the regional head is a career position given the fact that Senior Associate Officers and Primary High Leadership Positions are authorities held by a State Civil Apparatus or those of professional sector or government positions (Putra, 2020). The condition that Senior Associate Officers and Primary High Leadership Positions belong to State Civil Apparatus can be seen in the explanation of Article 19 of Act Number 5 of 2014 on State Civil Apparatus asserting that:

- a. Senior Associate Officers consist of the secretary general of ministries, secretary general of ministries, secretary of ministries, principal secretary, secretary general of state secretariats, secretary general of non-structural institutions, director general, vice, inspector general, principal inspector, head of agency, expert staff of ministers, head of the presidential secretariat, head of vice president's secretariat, military secretary of president, head of Secretary of Presidential Advisory Council Member, secretary of provincial governments, and other equivalent positions;
- b. Primary high leadership positions consist of director, head of bureau, vice of deputy, secretary of the directorate general, secretary of the inspectorate general, secretary of the head of agency, head of center, inspector, head of the main station, assistant of the provincial secretariat, secretary of the regency/city, head of the agency/head of a provincial agency, secretary of the Regional Legislative Council, and other equivalent positions.

Implications of the Appointment of Acting Regional Head

The appointment of acting regional heads for both Governors and Regents and Mayors is a political and legal choice that entails various implications (Abustan, 2022). First, the appointment of acting regional heads has certainly degraded the meaning that a regional head is elected on a democratic basis (Kosasih, 2017). Regional heads are elected democratically as regulated in Article 18 Section 4 of the 1945 Constitution of the Republic of Indonesia which is a constitutional condition that requires regional heads to undergo an election process while determining who the acting regional head is carried out through an appointment mechanism. Democratic appointments and elections are separate things.

Appointments are very dependent on the absolute will of the official who has the authority to assign. Meanwhile, elections depend on the majority of the people's votes, bearing in mind that in the election mechanism, the person who will occupy the regional head office must be the individual who obtains the majority of votes in a direct election (Wardhana, 2016).

As a consequence of appointing the regional head from the civil apparatus, therefore making the status relationship of regional head and Minister-President becomes the one that applies in the civil service or administrative setting where an acting regional head will be evaluated by the superior government. An acting Regent/Mayor will have their performance assessed by the Minister and if the results of the assessment are unfavorable in terms of performance, then the Minister can dismiss or replace the acting regional head with someone else. The Minister of Home Affairs evaluates the performance of acting regional heads in their leadership, especially inflation. If the acting regional head cannot control inflation, the acting regional head will be substituted by the Minister of Home Affairs. The replacement of regional heads by the Minister of Home Affairs shows the evaluation pattern between superiors and subordinates. This is, of course, unlike the evaluation between the Minister of Home Affairs and the definitive regional head where the Minister of Home Affairs cannot replace the definitive regional head regardless performance being considered underwork (Kamaruzzaman, 2022).

Evaluating and dismissing acting regional heads by the Minister is an evaluation model that does not apply or does not exist in the regional government where a regional head is directly evaluated by the people and the manifestation of the people's assessment of the performance is achieved in the future election. If a regional head is deemed successful in piloting, then the regional head may automatically be re-elected. In contrast, if he is deemed unsuccessful, then he may not be re-elected in the following period.

On the other hand, appointing acting regional heads by Senior Associate Officers and Primary High Leadership Positions automatically obliterates people's opportunity to become acting regional heads. This indicates that the acting regional head has been monopolized by the State Civil Apparatus. In practice, the regional head as government leader at the Regency, City, and Province level is the right of every citizen, not limited to State Civil Apparatus. The public should be allowed to become acting regional heads. This treatment is at odds with the mechanism for the definitive regional head. In definitive status, all people have equal rights to be elected and vote (Hasanah & Handoko, 2020). This includes State Civil Apparatus who runs for regional head candidate as long as he resigns from the current status. Therefore, the regional head can be taken over or given to non-State Civil

Apparatus/National Armed Forces/National Police members. The viable mechanism is open selection or a position auction approach.

The second is civil supremacy (Darmawan & Falah, 2022). Civil supremacy is one of the main principles inherent in the regional head. The said civil supremacy is a separation of the regional head from National Armed Forces (Anugrah, 2023). At the same time, the principle of civil supremacy is also applied to cease the domination of the Indonesian Armed Forces (ABRI) which dominated government positions in the New Order (during Soeharto's regime) (Anwar, 2018). Based on this principle of civil supremacy, occupying the regional head is carried out through direct election by the people and each participant or candidate pair participating in the election cannot be registered as a member of the National Armed Forces /National Police. Following this pattern, there is a clear distinction between which areas are for civilians and which areas are for security and defense areas. Explicitly saying, that National Armed Forces and National Police members' rights are stripped to be elected and to vote in every election, including regional head elections and presidential elections (Apena, 2017).

Accordingly, when the appointment of acting regional heads is trusted to active National Armed Force members, such as the appointment of the Regent of West Seram, this appointment automatically subverts the civil supremacy that has been established with struggles over more than two decades, especially after the 1998 reforms in Indonesia (Hilal, Hendra, Legionosuko, & Risman, 2022).

Third is the alienation of one pair. The appointment of an acting regional head which only assigns the acting regional head and is not accompanied by the appointment of an acting vice regional head is a decision that forsakes the sense that the regional head and vice regional head are a pair. This is inversely proportional to the process of a definitive regional head, in which a candidate for regional head and vice regional head is selected in pairs.

The elimination of the acting vice regional head in appointing of regional head is a legal phenomenon that signifies that the pair election in regional elections is an inappropriate form (Pahlevi, 2012). This is because eliminating the appointment of acting vice regional head infers that a region does not need a vice regional head. However, in the quinquennial election, the vice regional head is elected together with the regional head candidate, suggesting that the vice regional head is an important position as well (Arbani, 2018).

Concomitantly, the appointed regional head does not only serve for a short time, so the argument for banishing the position of vice regional head is incorrect. This is because the appointed regional head will not run the office as regional head for an immediate period. For example, if an acting regional head is appointed in May 2022, the regional head will serve office for more than half the period or no less than 2.5 years ("Complete List of Official Regional Heads Appointed by MOHA May 2022," 2022).

This long duration of office implies that an acting vice regional head is necessary. If a comparative approach is used to elect a definitive vice regional head, when vice regional head dies with less than half of the remaining term of office or less than two years, the appointment of vice regional head should be carried out. For example, the Vice Regent of Pamekasan Regency Moh. Rubaie, who passed away, was replaced by RB. Fattah Yasin (on 28 March 2022) even though the term of the pair of Pamekasan Regent and Vice Regent would expire in 2023 (Rahman, 2022).

Principally, the absence of the acting vice regional head is a political and legal choice that cannot be reasoned given that if there is no appointment it will affect many aspects, such as the responsibilities of vice regional head that cannot be accomplished.

Also, the vacant vice regional head will make the budget and facilities intended for vice regional heads untouched. This means that appointing officials using a package system, namely appointing an acting regional head as well as an acting vice regional head does not burden the budget ceiling because it has been allocated in package.

Fourth is the hierarchy of the constitutional system. The Indonesian constitutional system is a unitary state system in the form of a republic (Government of the Republic of Indonesia, 1945a). The Unitary State of the Republic of Indonesia is divided into provincial areas and provincial areas are subsequently divided into regencies and cities. Therefore, orderly, the Republic of Indonesia covers the entire territory of Indonesia with the President as the leader. The Provincial region is a region that encompasses several Regencies and Cities with the Governor as the leader, while the Regency and City regions are autonomous regions consisting of several sub-districts with the Regent and Mayor as leaders. From the explained structure, it is apparent that the leadership structure is the President, Governor, and Regent or Mayor.

Table 3

Indonesian Government Level Based on Regional Level

No	Area	Head of Government
1	The Unitary State of the Republic of Indonesia	President
2	Province	Governor
3	Regency/City	Reagnet/Mayor

With this regional level or vertical approach, the President is the Governor's superior, the Governor is the Regent/Mayor's superior although Act number 23 of 2014 on Regional Government stipulates that regional heads are not subordinate to the President or are only referred to as representatives of the central government in the regions. Thus, if the process of appointing acting regional heads is subject to the administrative or state civil apparatus, the assigning pattern for acting regional heads should follow the hierarchy of the state civil apparatus with the President as the highest leader of state administration. This vertical logic corresponds with *ius constitutum* in Article 86 paragraph 2 of Act Number 23 of 2014 concerning Regional Government which states " If the governor is suspended and no deputy governor, the president sets the acting governor upon the recommendation of the Minister." Referring to Article 86, the President's decision regarding the appointment of acting regional heads for the Bangka Belitung Islands, Erzaldi Rosman Djohan, Governor of Banten Wahidin Halim, Governor of Gorontalo Rusli Habibie, Governor of West Sulawesi Muhammad Ali Baal Masdar, and Governor of West Papua Do Minggus Mandacan, is a decision corresponding with the hierarchy or vertical structure of the Indonesian state administration (Nugraheny & Rastika, 2022).

However, such vertical administrative logic does not apply to the process of appointing acting Regent/Mayor because the legal construction of the relationship between the central and regional governments does not make the regional head subordinate to the President. When appointing an acting Regent/Mayor, the authority does not rest with the Governor but rather with the Minister of Home Affairs as stipulated in Article 86 Section 3 of Act Number 23 of 2015 on Regional Government that if the Regent/Mayor is temporarily dismissed and there is no vice Regent/Vice Mayor, the Minister appoints an acting Regent/Mayor on the recommendation of the Governor as a representative of the Central Government. This implies that the appointment of acting Regent and acting Mayor is performed by central officials, not by the Governor (Government of the Republic of Indonesia, 2015). This pattern surely violates the pattern of Indonesia's system which is arranged in stages from the Regency/City-Province-Central Government level (Wijayanti, 2016). Supposedly, if it is consistent with the vertical structure of state administration, the acting Regent and acting Mayor are appointed by the Governor considering that the Regency/City area is within the Provincial government.

Fifth, the authority regarding the appointment of acting regional heads is under the President/Minister of Home Affairs, so it influences the status of the Minister of Home Affairs (MOHA) who can freely determine acting regional heads as long as they have official ranks of Senior Associate Officers or Primary High Leadership Positions. This circumstance certainly attests to the professionalism of the Minister of Home Affairs since the potential for the Minister of Home Affairs to appoint acting regional heads is based on emotional intimacy rather than competence. In selecting an

acting regional head, a Minister also has political interests, including those entrusted by political parties through the President or the Minister directly. This potential is increasingly open because the acting regional head who will be appointed will serve in the political period or year in which the acting regional head will become the leader of a region during the legislative general election and the election of the President/Vice President. In this case, there is a lot of interest, especially from prospective legislative members, if the acting regional head is an acquaintance, then it can be diverted into political power in a region to gain votes.

The appointment of acting regional heads which falls under the authority of the Minister has resulted in the Minister appointing the acting head that abandons regional interests or the proposals of regional heads. In this case, the Minister does not regard nor overrule the Governor's proposal for a regional head candidate as acting Regent/Mayor. The example happened in Maluku and North Sulawesi. In Maluku, the Governor of Maluku proposed names to the Minister of Home Affairs as Acting Regent but none of the names proposed by the Governor of North Maluku were chosen by the Minister of Home Affairs and the Minister even appointed another person to become Acting Regional Head (Herin, 2022). Meanwhile, the Governor of North Sumatra refused to appoint acting regional head selected by the Minister (Kartika, 2022). The dismissal was motivated by the disappointment of the Governor of North Sumatra who perceived that the names recommended were ignored by the Minister of Home Affairs.

Sixth is the term of office. Acting regional heads, both governors and regents/mayors, are acting regional heads who can hold their positions for more than 30 months. This is because the acting regional head's term may end when the definitive regional head has been appointed. The duration between the appointment of an acting regional head and the regional head's inauguration is 31 months. For example, five Governors inaugurated in May 2022 will serve until February 2024. This is because the regional head election for the definitive regional head will be held on 24 November 2024. If the election is held in November 2024, then the new definitive regional head can be appointed in 2025. If voting takes place on 24 November, the finalization of the vote counting will occur in the following month or in December. After the vote results are determined, the process of resolving disputes over the results will continue in the Constitutional Court/Special Judicial Body for 45 days so the new inauguration can take place at the end of February to mid-March. Thus, there is a gap of around 33 months from May 2022 to March 2024. This exceptionally long duration is an unprofessional duration for a very strategic position. Another option for filling the position of regional head apart from appointing is to assign the position of definitive head through election by the Regional Legislative Council.

Seventh is authority (Marwi, 2016). Authority is the cornerstone for an official to be able to carry out responsibility so the authority of each official differs (Siboy, 2022). An official may not perform responsibility outside his authority and should not exceed his authority. In terms of authority, a distinction is also drawn between the authority of definitive officials and non-definitive officials, such as the authority of definitive regional heads and the authority of acting regional heads. This dissimilarity departs from the logic that a definitive official is a person who is entitled to a position, while an acting regional head is an official who occupies someone else's position temporarily. Therefore, there are authorities of regional heads that cannot be exercised by acting regional heads, such as carrying out transfers of state civil apparatus such as Regional Secretaries and Heads of Services at Regional Apparatus Organizations.

However, several authorities that cannot be accomplished by acting regional heads are very detrimental to the people if they are not implemented considering that these authorities are related to the people's rights. Thus, if this authority is carried out within two years, there will automatically be significant losses, both direct and indirect.

The Constitutional Court, through its judgment Number 67/PUU-XIX/2021, attempts to take a middle ground by suggesting that authority be equalized between the authority of the acting regional head and the definitive regional head. The Court believes that "taking into account the period a region has been led by an acting regional head, it is necessary to consider entrusting the acting regional head the same authority during the transition period towards simultaneous national elections as the definitive regional head. "Because of the full authority of the appointed acting regional head, accelerated development of regional development can be achieved without any differences between regions led by acting regional heads and those who are definitive (Constitutional Court, 2021)." When the acting regional head has equal authority as the definitive regional head with a serving period of acting regional head of more than 30 months. This suggests that the acting regional head can effortlessly gain the sympathy of the people and if he can sept into the simultaneous regional elections, the chances of winning are very likable.

The difference in authority between the acting regional head and the definitive regional head will modify the establishment of regional regulations regarding the Local Government Budget which is arranged annually. This becomes a debatable discourse of when a region is led by an acting regional head. This is because Regional Regulations are those whose absolute authority rests with the definitive regional head and the Regional Legislative Council. This is following Article 78 (1) of Act Number 12 of 2012 on the Establishment of Legislations stating that Draft Provincial Regional Regulations which have been jointly approved by the Regional Legislative Council and the Governor are submitted by the head of the Regional Legislative Council to the Governor to be adopted as. Provincial Regulations. This

term firmly states that approval of a draft Regional Regulation including the Draft Regional Regulation on the Local Government Budget must be entirely approved by the definitive regional head and the Regional Legislative Council or, in other words, the authority cannot be transferred from the definitive head to the acting regional head.

Thus, it is evident that an acting regional head cannot create regional regulations. If an acting regional head continues to sign the Regional Regulations, this will automatically make the two regulations null and void (Rifai, 2013). Null and void refer to the regulation that is deemed non-existent and cannot be enforced because it is formed by an unauthorized official.

CONCLUSION

Judicial review of the provisions regarding the appointment of acting regional heads has become a request with the decision dismissed by the Constitutional Court on the logic that the appointment of acting regional heads to fill the absence in the regional head positions before the simultaneous regional elections in 2024 is a constitutional appointment mechanism given that the appointing of the regional head position does not always undergo regional election.

The opinion of the Constitutional Court is an argument that has alienated the meaning of popular sovereignty. This is because the sovereignty of the people in occupying the position of the regional head is that the people can directly elect their regional head. Meanwhile, in appointing acting regional heads, the decision makers are the President and the Minister of Home Affairs. Not only that, the implementation of the appointment of acting regional heads has shown implications in shifting position of the regional head, in which the regional head which should be in a political position becomes a professional/career position so it can only be occupied by the State Civil Apparatus, while civilians cannot obtain the right to become acting regional head. Ironically, the acting regional heads who are appointed do not comply with the demands of the region, so they often receive rejection. Simultaneously, there is no apparent distinction between the authority of a definitive regional head and an acting regional head, even though based on *ius constitutum*, regional head, and acting regional head should be so that their authority must also be differentiated because authority follows a position as the principle stating a position follows authority.

REFERENCES

- Abustan. (2022). Implementasi Demokrasi dan Legitimasi Penjabat Kepala Daerah di Indonesia. *ILREJ*, 2(3), 274–287. <https://doi.org/10.22219/ilrej.v2i3.22202>
- Anugrah, F. N. (2023). Analisis Relevansi Penunjukan Anggota Tni/Polri Sebagai Penjabat (Pj) Kepala Daerah. *Jurnal Kebijakan Pembangunan*, 18(1), 121–134. <https://doi.org/10.47441/jkp.v18i1.294>
- Anwar. (2018). Dwi Fungsi ABRI: Melacak Sejarah Keterlibatan ABRI dalam Kehidupan Sosial Politik dan Perekonomian Indonesia. *Jurnal Adabiya*, 20(1), 23–46.
- Apena, W. E. (2017). Kajian Konstitusional Atas Hak Pilih Anggota TNI Dan Polri Dalam Pemilihan Umum. *Jurnal Lex Crimen*, 6(1), 131–140.
- Arbani, T. S. (2018). Analisis Yuridis Pengisian Jabatan Wakil Kepala Daerah Dalam Penyelenggaraan Pemerintahan Daerah. *Wacana Hukum*, 24(2), 38–54.
- Arifulloh, A. (2015). Pelaksanaan Pilkada Serentak Yang Demokratis, Damai Dan Bermartabat. *Jurnal Pembaharuan Hukum*, 2(2), 301–311. <https://doi.org/10.26532/jph.v3i3.1376>
- Assyayuti, M. A. M. (2022). Urgensi Penataan Ulang Mekanisme Pengisian Jabatan Penjabat Kepala Daerah Perspektif Demokrasi Konstitusional. *Lex Renaissance*, 2(7), 281–295. <https://doi.org/10.20885/JLR.vol7.iss2.art5>
- Charity, M. L. (2016). Ironi Praktik Rangkap Jabatan Dalam Sistem Ketatanegaraan Indonesia (Irony Practices Of The Double Duty In The Indonesian State System). *Jurnal Legislasi*, 13(1), 1–10. <https://doi.org/10.54629/jli.v13i1.81>
- Daftar Lengkap Penjabat Kepala Daerah Resmi Dilantik Mendagri Mei 2022. (2022). Retrieved from Harian.Id website: Harian.Id
- Darmawan, & Falah, M. F. (2022). Dinamika Hukum Pemilihan Kepala Daerah Serentak Tahun 2024. *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam*, 4(2), 241–250. <https://doi.org/10.37680/almanhaj.v4i2.1656>
- Faisyah, N., Sudarsono, S., Hadiyantina, S., & Amir, I. (2023). Keabsahan Pengangkatan Penjabat Kepala Daerah Akibat Penundaan Pemilihan Kepala Daerah. *Al-Adalah: Jurnal Hukum Dan Politik Islam*, 8(1), 44–65. <https://doi.org/10.30863/ajmpi.v1i1.3568>
- Fatih, S. Al. (2023). *Perkembangan Metode Penelitian Hukum di Indonesia*. Malang: UMM Press.
- Hadita, C. (2021). Implikasi Kedudukan Wakil Kepala Daerah Dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Terhadap Sistem Pemerintahan Daerah. *Jurnal Buletin Konstitusi*, 2(1).
- Hasanah, M., & Handoko, D. (2020). Hak Sipil: Hak Dipilih Dan Hak Memilih Serta Hak Ekosob: Hak Atas Pendidikan. *Riau Law Journal*, 4(1), 86–102. <https://doi.org/10.30652/rlj.v4i1.7822>
- Herin, F. P. (2022, May 20). Daerah Tolak Lantik Penjabat Bupati Di Luar Usulan. *Kompas*. Retrieved from Kompas.Id
- Hilal, S., Hendra, A., Legionosuko, T., & Risman, H. (2022). Pasang Surut Hubungan Sipil Militer Di Indonesia Dan Tantangannya Pada Masa Depan NKRI. *Jurnal Inovasi Penelitian*, 2(10), 3549–3350. <https://doi.org/10.47492/jip.v2i10.1383>
- Hsb, A. M. (2016). Pemilihan Kepala Daerah Yang Demokratis Berdasarkan Putusan Mahkamah Konstitusi Nomor 97/Puu-Ix/2013. *Jurnal Legislasi*, 13(3), 227–234. <https://doi.org/10.54629/jli.v13i3.147>
- Huda, N. (2021). Problematika Penundaan Pemilihan Kepala Daerah Dalam Pemilihan Umum Serentak Nasional 2024. *Jurnal Etika & Pemilu*, 7(1).
- Iswari, F. (2020). Aplikasi Konsep Negara Hukum Dan Demokrasi Dalam Pembentukan Undang-Undang Di Indonesia. *JCH (Jurnal Cendekia Hukum)*, 6(1), 127–140.

- <https://doi.org/10.3376/jch.v6i1.285>
- Kamaruzzaman, S. (2022, June 16). Mendagri Tito Karnavian Pastikan Penjabat Kepala Daerah Akan Dievaluasi Setiap Tiga Bulan. *Tribun*. Retrieved from <https://aceh.tribunnews.com/2022/06/16/mendagri-tito-karnavian-pastikan-penjabat-kepala-daerah-akan-dievaluasi-setiap-tiga-bulan>
- Kartika, M. (2022, May 23). Gubernur Tolak Lantik Penjabat Bupati, Kppod: Akibat Tak Ada Regulasi Teknis. *Republika Online*. Retrieved from <https://news.republika.co.id/berita/rcbtzs428/gubernur-tolak-lantik-penjabat-bupati-kppod-akibat-tak-ada-regulasi-teknis>
- Kosasih, A. (2017). Menakar Pemilihan Umum Kepala Daerah Secara Demokratis. *Al-Imarah: Jurnal Pemerintahan Dan Politik Islam*, 2(1). <https://doi.org/10.29300/imr.v2i1.1028>
- Kumolo, T. (2015). *Politik Hukum Pilkada Serentak*. Jakarta: Expose.
- Kurnia, F. R., & Rizari, R. (2019). Tinjauan Yuridis Kewenangan Penjabat Sementara (Pjs) Kepala Daerah. *Transformasi: Jurnal Manajemen Pemerintahan*, 11(2), 79–97. <https://doi.org/10.33701/jtp.v11i2.691>
- Kurniawaty, Y. (2016). Penggunaan Diskresi Dalam Pembentukan Produk Hukum. *Jurnal Legislasi Indonesia*, 13(1), 53–62. <https://doi.org/10.54629/jli.v13i1.140>
- Kusuma, M. T. (2022). Pengisian Kekosongan Jabatan Kepala Daerah Menjelang Pemilihan Serentak 2024. *Jurnal Sosio Yustisia: Jurnal Hukum Dan Perubahan Sosial*, 2(2), 1–33. <https://doi.org/10.15642/sosyus.v2i2.200>
- Mahkamah Konstitusi. *Putusan Mahkamah Konstitusi Nomor 67/PUU-XIX/2021*. , (2021). Indonesia.
- Marwi, A. (2016). Kewenangan Penjabat Kepala Daerah Di Bidang Kepegawaian Dalam Menyelenggarakan Pemerintahan Daerah (Studi Pada Pemerintahan Kota Mataram). *Jurnal IuS*, 4(3), 540. <https://doi.org/10.29303/ius.v4i3.340>
- Muldoon-Smith, K., & Sandford, M. (2023). Grasping the nettle: the central–local constraints on local government funding in England. *Territory, Politics, Governance*, 11(8), 1709–1726. <https://doi.org/10.1080/21622671.2021.1924249>
- Nugraheny, D. E., & Rastika, I. (2022, May 12). Dilantik, Lima Penjabat Gubernur Resmi Bertugas. *Kompas*. Retrieved from <https://nasional.kompas.com/read/2022/05/12/09312991/dilantik-lima-penjabat-gubernur-resmi-bertugas>
- Pahlevi, L. (2012). Posisi Wakil Kepala Daerah Dalam Sistem Pemerintahan Daerah Di Indonesia. *Kajian*, 17(1). <https://doi.org/10.22212/kajian.v17i1.358>
- Pemerintah Republik Indonesia. *Pasal 1 Ayat 1 UUD NRI Tahun 1945*. , (1945). Indonesia.
- Pemerintah Republik Indonesia. *Pasal 5 UUD NRI tahun 1945*. , (1945). Indonesia.
- Pemerintah Republik Indonesia. *Pasal 19 Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara*. , (2014). Indonesia.
- Pemerintah Republik Indonesia. *Pasal 242 Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah*. , (2014). Indonesia.
- Pemerintah Republik Indonesia. *Pasal 86 ayat 3 Undang-Undang Nomor 23 Tahun 2015 tentang Pemerintahan Daerah*. , (2015). Indonesia.
- Putra, W. M. (2020). Jabatan Pimpinan Tinggi Berdasarkan Undang-Undang Aparatur Sipil Negara Dan Perbandingannya Dengan Jabatan Struktural Pada Undang-Undang Nomor 43 Tahun 1999 Tentang Pokok-Pokok Kepegawaian. *Jurnal Legislasi Indonesia*, 17(2), 167–179. <https://doi.org/10.54629/jli.v17i2.550>
- Rahman, F. (2022, March 28). Profil Fattah Jasir, Wakil Bupati Pamekasan Terpilih Periode 2018-2023.

- Sinergi Madura*. Retrieved from <https://www.sinergimadura.com/profil/pr-2903049442/profil-fattah-jasin-wakil-bupati-pamekasan-terpilih-periode-2018-2023>
- Rifai, E. (2013). Kajian Terhadap Putusan Batal Demi Hukum Tanpa Perintah Penahanan (Studi Putusan Mahkamah Konstitusi No. 69/PUU-X/2012). *Jurnal Konstitusi*, 10(1), 49–68.
- Siboy, A. (2022). Reinforcing Central Government's Authority over Regional Governments in the system of Indonesian Governance. *Jurnal Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 21(1), 67–83. <https://doi.org/10.31941/pj.v21i1.1998>
- Siboy, A. (2023). *Pengantar Hukum Pilkada*. Depok: Rajawali Press.
- Siboy, A., Al-Fatih, S., Triasari, D., & Tegnan, H. (2023). Legal Social Justice in Appointment Non-Definitive Regional Heads toward Welfare State. *Jurnal Bestuur*, 11(1). <https://doi.org/10.20961/bestuur.v11i1.71055>
- Sudrajat, T. (2014). Eksistensi Kebijakan Pengisian Jabatan Struktural Dalam Kerangka Pengembangan Sdm Aparatur Berbasis Merit. *Jurnal Kebijakan Dan Manajemen PNS*, 8(1), 61–71.
- Wardhana, A. F. G. (2016). Calon Tunggal dalam Pemilihan Kepala Daerah dan Wakil Kepala Daerah Perspektif Hukum Progresif. *Jurnal Hukum Ius Quia Iustum*, 2(23), 206–229. <https://doi.org/10.20885/iustum.vol23.iss2.art3>
- Wijayanti, S. N. (2016). Hubungan Antara Pusat dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014. *Jurnal Media Hukum*, 23(2), 186–199. <https://doi.org/10.18196/Jmh.2016.0079.186-19>.
- Yuliastati, K. (2017). Urgensi Anggaran Pendapatan Belanja Daerah (APBD) Terhadap Perencanaan Pembangunan Daerah. *E-Jurnal Katalogis*, 5(4), 160–171.