

RECONSTRUCTION OF THE AUTHORITY TO FILL VACANCIES THE POSITION OF REGIONAL HEAD IN THE PERSPECTIVE OF CONSTITUTIONAL DEMOCRACY IN INDONESIA

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Abstract

The appointment of interim regional heads (Pj) by the President or the Minister of Home Affairs to fill regional leadership vacancies has become a dominant practice in Indonesia's constitutional system following the implementation of simultaneous regional elections. Although this practice is regulated by statutory law, it raises constitutional concerns that contradict the principles of democracy and the rule of law as stipulated in Articles 1(3) and 18(4) of the 1945 Constitution of the Republic of Indonesia. This research employs a normative juridical approach using doctrinal, conceptual, historical, and comparative methods to examine the inconsistency between positive legal norms and constitutional principles. The findings indicate that the current model of appointing regional heads is bureaucratic, non-transparent, and non-participatory, creating space for central government dominance without political legitimacy from the people or their regional representatives. This study proposes a reconstructed model of authority that places Regional People's Representative Councils (DPRD) as the primary actors in the appointment process through open nomination, eligibility screening, legislative selection, and formal ratification by the central government. The proposed model aligns more closely with constitutional democracy, enhances political legitimacy, and strengthens accountability in regional governance.

Keywords: Constitutional Democracy, Rule of Law, Regional Heads, Interim Appointment, DPRD, Regional Autonomy, Political Legitimacy, Authority Reconstruction.

INTRODUCTION

Indonesia as a state of law based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), upholds the principle of democracy as the basis for the administration of government. This is also emphasized in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which states that regional heads—both governors, regents, and mayors—are democratically elected. This provision reflects the importance of people's participation in the process of filling public positions in the regions as a manifestation of people's sovereignty (Rais, 2022; Simamora, 2014; Hadi et al., 2022; Scott, 2018; Rauta, 2016).

However, in the current practice of state administration, there has been a significant shift in the mechanism for filling vacancies in the position of regional head. Based on data from the Ministry of Home Affairs in 2023, there are more than 170 regions in Indonesia whose regional heads are filled by acting (Pj) appointed directly by the President or Minister of Home Affairs. The appointment refers to the provisions of Article 201 paragraphs (10) and (11) of Law No. 10 of 2016 in conjunction with Law No. 6 of 2020, and is further regulated in Permendagri No. 4 of 2023. The acting regional heads

generally come from the ASN of the Intermediate or Primary High Leadership Officials (PPT), and are determined without an election mechanism or the involvement of the Regional People's Representative Council (DPRD) (Abustan, 2022; Putra et al., 2023).

This phenomenon raises concerns about the erosion of democratic principles, because appointments are carried out on a top-down basis without a process of public involvement or local political representation. On the other hand, the appointment of Acting Regional Heads by the central government has the potential to cause inequality in power relations between the central and regional governments, as well as raise doubts about the political legitimacy and accountability of appointed officials. This is contrary to the spirit of regional autonomy and decentralization that has been fought for since the reform era.

Historically, the mechanism of electing regional heads through direct elections and by the DPRD has been part of the discourse of local democracy in Indonesia. After the Constitutional Court Decision No. 5/PUU-V/2007 which opened up opportunities for individual candidates, the strengthening of local democracy is increasingly gaining momentum. However, the Constitutional Court's decision No. 14/PUU-XI/2013 on the holding of simultaneous elections actually encouraged the occurrence of a large number of vacancies in the position of regional heads, so that the practice of appointing acting officials administratively emerged. This shows a conflict between the interests of electoral efficiency and the principles of substantive democracy (Paskarina, 2016; Ulum, 2021).

Furthermore, when compared to the practice in some other countries, such as the United States or Germany, the filling of public office vacancies always takes into account the involvement of local legislatures and public control mechanisms. Indonesia, in this case, has actually experienced a narrowing of the space for public participation in political decision-making, especially at the regional level. This shows that there is an urgent need to reconstruct the system and authority in filling the position of regional head.

The urgency of this research arises from the need to correct constitutional practices that are unconstitutional and not in line with democratic principles as affirmed in the constitution. The bureaucratic appointment of acting regional heads not only ignores the political rights of the people, but also creates a dangerous precedent in the institutionalization of local democracy. This practice can also weaken the accountability of regional leadership that does not have a basis of electoral legitimacy.

Previous research has more highlighted the formal legality aspect of the appointment of Acting Regional Heads, or dwells on administrative justification for the need to fill vacancies. However, there have not been many studies that critically highlight the incompatibility of these practices with the basic norms of Pancasila and the 1945 Constitution, and do not explore the strategic role of the DPRD in the mechanism for filling the positions of regional heads. This research gap is an important basis for this research to present a constitutional and democratic model of authority reconstruction.

This study aims to analyze the suitability of filling vacancies in the position of regional head through the appointment mechanism with the principles of the state of law and democracy in the 1945 Constitution of the Republic of Indonesia, as well as formulate a model for reconstructing the authority to fill vacancies in the position of regional head in a more democratic manner by involving the DPRD as the representative of the people in the regions. The main contribution of this research is to provide a normative and conceptual foundation in building a system for filling regional head positions that is democratic, participatory, and in accordance with constitutional principles. The results of

this study are expected to be recommendations for policymakers in formulating revisions to laws related to local government and the mechanism for appointing temporary regional heads.

METHOD

This research uses a normative juridical method, which is a research that focuses on the assessment of written legal norms, especially laws and regulations and court decisions, to assess the suitability of the practice of filling vacancies in regional heads with the principles of democracy and the rule of law as stipulated in the 1945 Constitution of the Republic of Indonesia. This type of research is a prescriptive doctrinal law research, as it aims to formulate an ideal legal concept through an analysis of relevant legal principles, norms, and doctrines (Sonata, 2014; Taufik Firmanto et al., 2024).

To support the analysis, this study uses several approaches, namely a legislative approach to examine positive legal rules; conceptual approaches to understanding the theory of the state of law, democracy, and authority; historical approach to trace regulatory developments; as well as a comparative approach to compare with practices in other countries.

The sources of legal materials used include primary legal materials such as the 1945 Constitution of the Republic of Indonesia, Law No. 10 of 2016, Law No. 6 of 2020, Government Regulation No. 78 of 2012, and Permendagri No. 4 of 2023; secondary legal materials in the form of books, scientific journals, and legal articles; as well as tertiary legal materials such as legal dictionaries and encyclopedias. All legal materials are analyzed by systematic, grammatical, historical, and comparative interpretation methods, in order to build strong legal arguments and produce recommendations for the reconstruction of authority in accordance with constitutional and democratic principles.

RESULT AND DISCUSSION

Incompatibility of the Appointment of Acting Regional Heads with the Principles of the State of Law and Democracy

The practice of appointing acting regional heads by the central government, both through the President and the Minister of Home Affairs, has become the dominant policy since the enactment of the Simultaneous Elections based on the Constitutional Court Decision No. 14/PUU-XI/2013. The impact of this decision is the occurrence of vacancies in hundreds of regions at the same time. Based on data from the Ministry of Home Affairs until the end of 2023, there are more than 170 regional head positions filled by Acting Heads from ASN JPT Intermediate or Primary. This policy is based on Article 201 paragraphs (10) and (11) of Law No. 10 of 2016 jo. Law No. 6 of 2020, and is derived into Permendagri No. 4 of 2023 (Stuart, 2015; Tuanaya, 2022).

However, substantially, the practice of appointment is contrary to Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which affirms that regional heads are democratically elected. The phrase "democratically elected" indicates that the mechanism for filling the position of regional head must reflect the participation of the people, either directly through elections and indirectly through representative institutions such as the DPRD. Unfortunately, filling positions through bureaucratic appointments does not meet the elements of public participation, and ignores the basic principles of representative democracy.

From the perspective of the state of law, this practice of appointment leads to the concentration of power in the hands of the central executive, without the supervision of

the local legislature. This is contrary to the principle of checks and balances that characterize a democratic state of law. Jimly Asshiddiqie stated that in a state of law, public power must be based on the constitution and implemented based on the principles of justice and the legitimacy of the people. In this context, the authority of the President or the Minister of Home Affairs to appoint the Acting Regional Head does not have an explicit constitutional basis and is more of an administrative construction than a constitutional norm (Usman, 2014).

Furthermore, from the perspective of authority theory, the position of regional head is part of the "medebewind" mechanism, which is the delegation of authority from the center to the regions within the framework of regional autonomy. Therefore, the filling of these positions should be carried out through a political process involving the people or their representatives in the DPRD. By appointing civil servants without a democratic political process, the central government has made the position of regional head solely an extension of the bureaucracy, not as a representative of the aspirations of the local community.

In addition to being contrary to the spirit of democracy, this appointment also raises legitimacy and accountability problems. The acting regional head has no electoral base, is not accountable to the DPRD, and has no direct relationship with the people he leads. This can pose a moral hazard in public decision-making, especially in strategic policies that concern regional interests.

Another aspect that needs to be criticized is the weak legal and political control over the appointment of Acting Regional Heads. The absence of a due diligence mechanism or consultation with the DPRD makes this process closed and vulnerable to central political intervention. In some cases, the appointment of the Acting Governor is also suspected as a means to maintain national political interests ahead of elections or regional elections, thereby reducing the quality of neutrality and objectivity of appointed officials.

By considering all of the above aspects, it can be concluded that the current practice of appointing acting regional heads within a positive legal framework does not reflect the principles of a democratic state of law. Therefore, it is necessary to reconstruct norms and authorities, so that the filling of vacancies in the position of regional head can be carried out constitutionally, democratically, and accountably.

To obtain a more complete perspective on filling vacancies in regional head positions, it is necessary to conduct a comparative study with practices in several countries that adhere to democratic and decentralized systems. This comparison aims to assess the extent to which the mechanisms currently used by Indonesia are in line with the principles of universal democracy, as well as to find alternative models that are more accountable and participatory.

Model of Democratic and Constitutional Authority Reconstruction

Based on the results of a study of constitutional norms, applicable constitutional practices, and comparative studies from several democratic countries, it was found that the practice of filling vacancies in regional heads in Indonesia currently does not meet the principles of democracy and the principle of the rule of law. Therefore, a model of authority reconstruction is needed that is able to answer the need for stability of local government without sacrificing the principle of people's representation (Kusuma et al., 2022).

The reconstruction model offered in this study departs from the premise that the filling of regional head positions, including temporary ones, must still be carried out

within the framework of constitutional democracy. This means that every form of public power, including administrative power, must gain legitimacy from the people, either directly or through legitimate representative institutions. In this context, the DPRD as a political representation of the people in the regions must be given a strategic and decisive role in the process of filling the vacancy of the position of regional head.

The proposed model consists of four main stages: open nomination, feasibility and propriety test by the DPRD, voting in plenary meeting, and administrative ratification by the President or Minister of Home Affairs. This series of mechanisms not only provides space for local political participation, but also affirms the principle of checks and balances between the central and regional governments. This mechanism also closes the gap for the practice of administrative authoritarianism that often infiltrates through the discretion of the central ruler in appointing acting officials without an adequate basis for legitimacy.

Further, this model asserts that democracy cannot be suspended simply for administrative technical reasons or bureaucratic efficiency. Precisely in the condition of vacancy, the democratic system is tested to still guarantee the people's right to legitimate and accountable leadership. If the power to appoint regional heads is still monopolized by the central government, then there will be a decentralization dysfunction that denies the principle of regional autonomy as guaranteed in Article 18 of the 1945 Constitution of the Republic of Indonesia.

In addition, there is a normative urgency to prevent potentially unconstitutional practices. The absence of the DPRD in the process of appointing acting regional heads creates a gray space in the legitimacy of power. In fact, in the theory of a democratic legal state, the authority of the government must be accountable publicly. Acting Regional Heads who are unilaterally appointed are not only difficult to supervise, but also tend to have political affiliations to the center of power, which ultimately undermines the independence of local policies.

The political implications of the current model cannot be ignored either. The appointment of acting officials by the central government is vulnerable to being used as a tool to control local political dynamics, especially in the run-up to elections. Officials who do not have a basis for the legitimacy of the people are vulnerable to being used as an extension of central power and often become a tool to influence the outcome of the next election, both through policy control and resource allocation. In the long run, this erodes public trust in democracy and opens up space for the centralization of power that goes beyond the limits of the constitution.

The reconstruction of this model of authority is basically not solely a matter of technical governance, but concerns the substance of democracy and constitutional justice. Re-involving the DPRD in the process of filling the position of regional head, although temporary, is a corrective step to restore the position of the people as the highest sovereign holder. This model does not negate the role of the central government, but places it in a proportionate position, namely as an administrative validator of legitimate regional political decisions.

Thus, the reconstruction proposed in this study is in line with the principle of the rule of law, respecting the principle of regional autonomy, and ensuring the representation of the people in every public power process. Only through a democratic and transparent mechanism can the legitimacy of local government be restored and people's trust in the political system can be strengthened.

CONCLUSION

This research concludes that the current practice of appointing Acting Regional Heads (Pj Kepala Daerah) by the President or the Minister of Home Affairs does not align with the constitutional principles of the rule of law and democratic governance as mandated by the 1945 Constitution of the Republic of Indonesia. The dominance of the executive branch in this process, without the involvement of regional representative institutions (DPRD), undermines the essence of representative democracy and disrupts the balance of power within local government systems. This centralistic mechanism weakens the constitutional values of accountability, transparency, and public participation. A comparative analysis with countries such as the United States, Germany, and the Philippines reveals that their systems maintain legislative oversight and uphold democratic legitimacy in similar appointments. These findings underscore the urgency for Indonesia to reconstruct the legal and institutional framework for appointing acting regional heads by formally involving DPRD in stages such as nomination, evaluation, and confirmation.

Future research is encouraged to explore the practical implications of DPRD involvement in regional governance, assess potential models of participatory appointment processes, and analyze their impact on the quality of local democracy. Further empirical studies should also evaluate how citizen trust and political accountability are influenced by more democratic appointment mechanisms at the regional level.

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