

# Democratization of Filling Regional Head Positions: Revisiting the System for Appointing Acting Officer of Regional Heads Pre-Election 2024

**Maurice Rogers**

*National Research and Innovation Agency (BRIN), Indonesia*

**Christo Samurung Tua Sagala\***

*University of Jember, Faculty of Law, Indonesia*

**Herdi Munte**

*Universitas Darma Agung, Indonesia*

**ABSTRACT:** The 2024 simultaneous regional head elections have significant implications for leadership vacancies across various regions. Consequently, to address these vacancies, interim regional heads will be appointed until definitive regional heads are elected following the 2024 elections. This paper aims to scrutinize the representation of the populace within the framework of appointing regional heads in Indonesia and to evaluate the concept of democratization as an ideal approach for selecting acting officers of regional heads. Through a normative analysis of diverse sources and prevalent social phenomena, it is asserted that democratization in the process of appointing regional heads is imperative for fostering leaders' accountability to their constituents. However, the current practice of appointing regional heads in Indonesia often diverges from democratic principles. Central government retains exclusive authority to appoint acting officers of regional heads through a closed, non-transparent process devoid of public participation. This process risks signaling vested interests between the appointing authority and the recipients of office. Therefore, reforming the system for appointing acting officers of regional heads becomes imperative to facilitate public involvement directly or through parliamentary institutions. This involvement should span the proposal, discussion, determination, monitoring, evaluation, and dismissal stages of acting regional heads. Furthermore, candidates for these positions should be limited based on the principle of regional autonomy. This entails requiring candidates to originate from the state civil apparatus as administrative officials or civil servants with extensive experience in the relevant region. Such requirements ensure that candidates possess a comprehensive understanding of governmental managerial duties, public service obligations, and the specific conditions and needs of the region and its populace.

**KEYWORDS:** Regional Head Vacancy; Representation of the People; Acting Officer of Regional Head; Simultaneous Regional Head Elections 2024.

\*Corresponding author's e-mail: [christosagala@unej.ac.id](mailto:christosagala@unej.ac.id)



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## **I. INTRODUCTION**

Regional heads as leaders in government at the regional level are differentiated into Governors, Regents, and Mayors, who, in administering their government, have autonomy based on principles, systems, objectives, and legal foundations. The granting of regional autonomy is essentially intended to realize the regional desire to regulate and realize all regional potential to the maximum to improve the welfare of the people in the region.<sup>1</sup>

According to the law on regional head elections, regional heads will be elected and appointed in pairs by the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor, as an implementation of popular sovereignty in the province, regency, and city. These elections were carried out directly by the people, initially held every five years according to the end time of the term of office of each regional head, until the law on regional head elections was changed by setting the time for regional head elections to be held simultaneously nationally every five years, which will be implemented for the first time in 2024.<sup>2</sup>

The implementation of direct elections is the result of Indonesia's transition from the New Order government to the reform era government, with the implementation of direct elections and post-conflict regional elections. The candidate's personal attractiveness, political party, local factors, economic factors, and religion/identity greatly influence the election

<sup>1</sup> Josef Mario Monteiro, *Pemahaman Dasar Hukum Pemerintahan Daerah* (Yogyakarta: Pustaka Yustisia, 2016) at 38.

<sup>2</sup> Heru Widodo, *Hukum Acara Perselisihan Hasil Pilkada Serentak di Mahkamah Konstitusi* (Jakarta: Sinar Grafika, 2016) at 80.

results.<sup>3</sup> On the one hand, this direct election mechanism will provide public control to pressure politicians to implement stricter monitoring procedures and make bureaucratic appointments that are more based on merit.

The performance of these politicians will increase their attractiveness in the eyes of voters. Politicians need to strengthen bureaucratic capacity and ensure the effective implementation of government programs. This approach underlies a series of policy initiatives aimed at improving “accountability relations,” such as those aimed at increasing transparency, citizen participation, or achieving freedom of information. Accordingly, decentralization is promoted as a sign of good governance, as closer interaction between voters and politicians would further increase accountability.<sup>4</sup> However, can community interaction with the regional head be established if the appointment of the regional head does not involve people's participation?

This is closely related to the vacancy in the position of regional head during the transition period for holding simultaneous regional head elections in 2024. The reason for the vacancy in the position is that the schedule for holding regional head elections is no longer adjusted to the end of the term of office of each regional head but must be held simultaneously in Indonesia. So, regions whose regional heads' terms of office end in 2022 and 2023 also have to wait until 2024 to take part in holding the simultaneous regional head elections. This means that regional elections must be delayed by up to two years before simultaneous regional elections are held in 2024, which aim to create a stable government.

Regarding this situation, the regional head election law requires the appointment of an acting regional head to fill the vacancy in the position to carry out the duties of the regional head until the next regional head is elected as a result of the simultaneous regional head election in 2024. The regional head position has significance because it serves as the administrator of the executive government in the region, which has the authority to make decisions related to consequential policies. A vacancy in the position of regional head will hinder development in the region.

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<sup>3</sup> Hal Hill Chatib Basri, “Making Economic Policy in a Democratic Indonesia: The First Two Decades” (2020) 15:2 *Asian Economic Policy Review* at 88.

<sup>4</sup> Ward Berenschot, “Incumbent Bureaucrats: Why elections Undermine Civil Service Reform in Indonesia” (2018) 38:4 *Public Administration and Development* at 1.

During the transition period for the implementation of simultaneous regional head elections in 2024,<sup>5</sup> positions were filled using a mechanism for appointing acting officers of regional heads for 270 provincial, regency, and city-level regions, whose regional heads' term of office ends in 2022 and 2023.<sup>6</sup> The regulations also stipulate that the appointment of the acting regional head is carried out by the central government by appointing state civil servants who have high leadership positions at echelon 1 and echelon 2 under the criteria or qualifications for positions regulated in the state civil service law in Indonesia. The duties and authority of acting regional heads have also been regulated in the 2018 Minister of Home Affairs Regulation concerning Leave Outside State Accounts for regional heads.

Looking at this phenomenon, it can be concluded that the acting officer of the regional head will be determining regional policy for an extended time. This situation can cause potential problems, impacting the sustainability of both the democratization in the region and the strategic development programs. Additionally, the concentration of power and authority in this position raises concerns about potential abuse of power. Apart from that, in this "transition period," there is also the potential for centralization of regional development due to the accountability of officials to the central government.<sup>7</sup>

In appointing the acting officer of the regional head, the central government must also choose the right person, measurable and free from political interests. The appointed acting officer of the regional head must carry out his duties well and in a trustworthy manner, considering that his term of office is almost half the term of office of the definitive regional head. So, we must continue to keep the government functioning maintain accountability to the people.<sup>8</sup> This paper aims to scrutinize the representation of the populace within the framework of appointing regional heads in

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<sup>5</sup> Christo Sumurung Tua Sagala & Mirza Nasution, "Implementasi Pancasila di Tahun Politik" (2022) 5:2 JAP, online: <<http://journal.bawaslu.go.id/index.php/JAP/article/view/206>> at 114.

<sup>6</sup> "Kemendagri: 270 Daerah Bakal Diisi Penjabat sampai Desember 2023", (31 August 2023), online: Ditjen Politik dan Pemerintahan Umum Kemendagri RI <<https://polpum.kemendagri.go.id/kemendagri-270-daerah-bakal-diisi-penjabat-sampai-desember-2023/>>.

<sup>7</sup> Cora Elly Noviati, "Demokrasi dan Sistem Pemerintahan" (2013) 10:2 Jurnal Konstitusi.

<sup>8</sup> Abdul Rozaq, "'Kekosongan Kekuasaan Menuju Pilkada Serentak tahun 2024'", (13 March 2024), online: <<http://www.kediri.bawaslu.go.id/berita/kekosongan-kekuasaan-menuju-pilkada-serentak-tahun-2024>>.

Indonesia and to evaluate the concept of democratization as an ideal approach for selecting acting officers of regional heads.

## II. METHODS

This paper uses a normative juridical methodology. That is, reviewing the application of positive legal rules or standards.<sup>9</sup> The ontology aspect that is the object of study in legal science is the norm. In addition, this research aims to compile a database of positive laws and regulations, identify legal principles and doctrines, synchronize existing laws and regulations, and conduct research through evaluation, examination, and exploration of various existing literature. Data collection techniques are carried out by reading scientific books, magazines, newspapers, and other literature related to research.<sup>10</sup> This study uses a law-based method, a conceptual-based approach, and a case-based approach. By taking a conceptual system and examining the views and doctrines that develop in the field of legal science, researchers will find ideas that contribute to understanding legal concepts and legal principles related to legal and political issues related to the head of the region officials appointed to fill the empty positions of the head of the region.

## III. SOCIAL REPRESENTATION IN THE SYSTEM OF FILLING REGIONAL HEAD POSITIONS IN INDONESIA

Bagir Manan, through the theory of responsibility, said that the model for filling positions can be divided into three methods: filling positions through elections, filling positions by appointments, and filling positions also including appointments and elections.<sup>11</sup> Harun Alrasid also stated that filling positions can be done by appointment, election, hereditary inheritance, rotation, and assuming office.<sup>12</sup>

Based on the history of filling regional heads in Indonesia, at least three models of filling regional head positions have been implemented. From

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<sup>9</sup> Irwansyah, *Penelitian Hukum : Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020) at 114.

<sup>10</sup> *Ibid.*

<sup>11</sup> Bagir Manan, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum Fakultas Hukum UII, 2002) at 37.

<sup>12</sup> *Ibid.*

1945 to 1957, an appointment mechanism by the central government would select from several candidates proposed by each regional parliament. From 1965 to 1999, regional heads were elected through indirect elections carried out by the respective regional parliaments. Furthermore, from 2004 to 2024, regional heads were elected directly by the people.<sup>13</sup> This means that the mechanism for filling regional head positions in Indonesia has been carried out democratically from the start by involving the community, either through indirect representation by people's representative institutions or by involving the people directly.

The 1945 Constitution also states that governors, regents, and mayors serve as heads at the provincial, regency, and city levels, respectively. Each of whom is the head of government with the task and authority to lead the regional government administration based on regional autonomy,<sup>14</sup> and all of them are democratically elected. The democratic method is further explained through the 2014 law on Regional Government and the 2015 law on regional head elections.

In carrying out regional autonomy, the regional head has the duty and authority to lead the implementation of government affairs and policies determined together with the regional parliament. This includes drafting and submitting draft Regional Regulations to the regional parliament and enacting regional regulations if they have been approved by the regional parliament, as well as maintaining peace and order. Apart from that, regional heads are also given the authority to issue policies and decisions of regional heads, as well as carry out certain actions in urgent situations needed by the region and the community.<sup>15</sup>

In the concept of the state as an organization, the state has a role in running governance and requires assistance from various organs to function. These organs are called state apparatuses. In the central government, the state

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<sup>13</sup> Ali Marwan Hsb, "Pemilihan Kepala Daerah yang Demokratis berdasarkan Putusan Mahkamah Konstitusi Nomor 97/Puu-IX/2013 (The Democratic of Regional Election Based on Constitutional Court Decisions Number 97/Puu-IX/2013)" (2016) 13:3 *Jurnal Legislasi Indonesia*, online: <<https://osf.io/t35cd>> at 229 DOI: 10.31219/osf.io/t35cd.

<sup>14</sup> Hariande L Bintang & Ahmad Jamaan, "Pengawasan DPRD Terhadap Pelaksanaan Perda" 11:1 *Jurnal Demokrasi & Otonomi Daerah* 2013 at 57.

<sup>15</sup> Dian Agung Wicaksono & Faiz Rahman, "Penafsiran terhadap Kewenangan Mengatur Pemerintahan Daerah dalam Melaksanakan Urusan Pemerintahan melalui Pembentukan Peraturan Daerah (Interpretation of the Regional Government's Authority to Regulate in Implementing Government Affairs through the Formulation of Regional Regulations)" (2020) 11:2 *Negara Hukum* at 236.

apparatus can be classified into several institutions, namely the legislature, executive, and judiciary. In relation to regional government, these institutions include the regional parliaments (DPRD) and the head of the region, which is a position that is given a mandate by the community to lead the government administration in the region.<sup>16</sup>

Viewed from the management aspect, the head of the region is a manager who coordinates management functions starting from planning, organizing, implementing, and controlling.<sup>17</sup> The head of the region must have the leadership qualities needed to govern the regional government administration. The head of the region is assisted by a deputy. In the event of a vacancy in either position, it must be filled immediately. Currently, there are several mechanisms for filling the position of the regional head, either democratically by involving the community directly to vote and being selected by the regional parliamentary institution or through an appointment mechanism from the central government, as will be reviewed below.

#### *A. Filling the Positions of Regional Head and Vice Regional Head through Direct Election*

Before the reform period, regional elections in Indonesia were determined by the regional parliaments. However, the election mechanism was seen as ignoring democratic values because of the potential for bargaining in the legislature, which often creates distrust in society. After the enactment of Law Number 32 of 2004 concerning Regional Government (UU 32/2004), Indonesia introduced regional head elections with the mechanism of being directly elected by the people, held for the first time since June 2005.<sup>18</sup>

This mechanism continues until this day, even though the regulations have been changed. The current regulation on regional head elections is regulated by 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 into Law, which increasingly

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<sup>16</sup> Eko Noer Kristiyanto, "Pelaksanaan Pemilihan Kepala Daerah Serentak di Indonesia: Studi di Batam" (2017) 17:1 j peneliti huk dejure 48 at 49.

<sup>17</sup> Sitti Aminah, "The Evaluation of Regional Head Election: Developing Synergy of Regional Autonomy and Regional Head Election" (2020) 12:2 J Bina Praja 137–151 at 142.

<sup>18</sup> Angga Suanggana, "Regional Head Election and Regional Head Election Court" (2011) 4:1 Jurnal Konstitusi at 25.

regulates regional head elections, including the time in which they are held, simultaneously every five years.<sup>19</sup> The beginning of the simultaneous regional elections in 2015 consisted of 269 regional elections spread across nine provinces, 224 regencies, and 36 cities.<sup>20</sup> It continued for the regional elections in 2017, 2018, 2020, and 2024.

The community's direct involvement in regional head elections is an implication of the amendment to the 1945 Constitution, which in Article 18 states that regional heads are elected democratically based on the current direct election mechanism. The position of regional head in Indonesia is a manifestation of the people's mandate because its determination is based on the the popular vote.<sup>21</sup> Although the meaning of the phrase democratic is still debated, it is interpreted as a form of representation of the people. This introduces a double interpretation, which views the people's representation as not only direct elections but also being elected indirectly through the people's representative government, namely the legislative institution.<sup>22</sup>

#### *B. Appointment of Vice Regional Head to Fill the Vacancy in the Position of Regional Head*

In addition to the direct election mechanism, the filling of regional head positions can also be accomplished by appointing vice-regional heads to become regional heads. This can happen if the regional head resigns from his position due to death, stops at his request, or is dismissed. The appointment to this position is proposes for ratification and submitted by the regional parliaments. The proposal is then submitted to the president through the Minister of Home Affairs for the appointment of provincial regional heads. Meanwhile, the appointment of the head of the regency and cities is proposed to the Minister of Home Affairs through the governor. However, if the regional parliaments do not submit the proposal within ten days, then the vice regional head will be appointed as regional head as stipulated in the law relating to the Election of Regional Heads.

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<sup>19</sup> Muhammad Bahrul Ulum, "Pemilihan Kepala Daerah di Indonesia Setelah Reformasi: Kesenambungan dan Perubahan" (2021) 4:2 UJH 309–343 at 312.

<sup>20</sup> Dedi Mulyadi, "Concurrent Regional Elections Phenomenon as a Political Recruitment in Indonesia" (2018) 18:1 JDH 87 at 88–89.

<sup>21</sup> Aminah, "The Evaluation of Regional Head Election", supra note 16 at 143–144.

<sup>22</sup> Ulum, "Pemilihan Kepala Daerah di Indonesia Setelah Reformasi", supra note 18 at 313.



However, if the appointment of the deputy regional head has not been ratified, the law on regional government also stipulates that temporarily, the deputy regional head is given the authority to carry out the daily duties of the regional head until the deputy regional head is appointed as the definitive regional head.<sup>23</sup>

The mechanism for filling the position of the regional head then causes the vacancy to move to the position of deputy regional head. To fill the deputy head of region vacancy, the regional parliaments will be assigned this task, proposing a political party or a combination of supporting political parties if the remaining term of office is 18 months or more. However, if the remaining term of office is less than 18 months, filling the position is determined by the minister and is implemented is no later than one month after the inauguration of the new regional head.

### *C. Filling the Positions of Regional Head and Vice Regional Head through Indirect Elections*

The 2015 law on regional government has given “indirect election” authority to regional parliaments to elect regional heads and deputy regional heads in the event of a vacancy before the end of the term of office of the regional head and deputy regional head simultaneously. For this reason, the regional parliament will elect a regional head and a deputy regional head candidate who will continue until the end of their term of office. The election mechanism through representative institutions is regulated in the 2018 Government Regulation and regional parliament regulations regarding implementation rules. Based on this regulation, the election of regional heads and deputy regional heads will be carried out by the regional parliament if there is a vacancy for regional heads and deputy regional heads with a remaining term of office of more than 18 months. Apart from that, regional parliaments are also given the authority to propose the appointment and dismissal of regional heads to the central government.<sup>24</sup>

The election mechanism is carried out through deliberation in the regional parliament to select people who will fill the vacancies in the

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<sup>23</sup> Humas Sekretariat Kabinet Republik Indonesia, “Ini Ketentuan PP No. 12/2018 Jika Terjadi Kekosongan Kepala Daerah Selama 18 Bulan Lebih”, (8 May 2018), online: Sekretariat Kabinet Republik Indonesia <<https://setkab.go.id/ini-ketentuan-pp-no-122018-jika-terjadi-kekosongan-kepala-daerah-selama-18-bulan-lebih/>>.

<sup>24</sup> Ibid.

positions of regional head and deputy regional head until the end of the term of office. This indirect election will also be more effective because its implementation can be fast and at a relatively low cost.<sup>25</sup> However, this indirect election system is debated because it could set a harmful precedent based on the experience of the regional head election system before the reform period, which created centralization in the central government. Indirect selection has advantages and disadvantages.<sup>26</sup> The advantage of this system is that because the regional head is elected by the regional parliament, a harmonious regional policy synergy can be formed between the regional head and the regional parliament to produce optimal regulatory products. While the weakness is the potential for bribery and nepotism because each political party in the regional parliament has interests and respective political goals.<sup>27</sup>

#### *D. Filling the position of Regional Head through the appointment of a Substitute Regional Head*

Filling the position of the regional head through the appointment of a replacement official is a mechanism for filling the vacancy in the position of the regional head if the definitive regional head and deputy regional head die, resign of their own accord, or are dismissed as regulated in Article 78 of the 2014 Regional Government Law.<sup>28</sup> This process is also closely related to the dismissal of regional heads whose terms of office have expired during the transition period for the simultaneous regional head elections in 2024, which results in vacancies in their positions and the need for replacement officials until a definitive regional head is determined from the election.

In the regional head election system, the terms for referring to substitute officials are divided into two types, namely acting officer of the regional head (Pj) and temporary regional head (Pjs), the application of which depends on the cause of the vacancy and the position of the regional head. If a vacancy occurs because the term of office of the pair of regional

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25 Aniqotun Nafiah & Nur Azizah Hidayat, "COVID-19 Pandemic and Simultaneous Regional Head Elections in Indonesia" (2021) 2:2 IJLS 145 at 159.

26 Muhammad Bahrul Ulum, "How Democracy is Election? Reassessing Article 18 (4) of the 1945 Constitution and Its Implication To The Regional Head Election in Indonesia" (2019) 8:2 J Huk dan Peradil 315 at 315.

27 Dedi Mulyadi & Tanti Kirana Utami, "The Dispute Settlement Model of Regional Head Election Perspective Theory of Legal System in Indonesia" (2017) 5:1 Int J Nusantara Islam 97–106 at 103.

28 Ahmad Siboy et al, "Legal Social Justice in Appointment Non-Definitive Regional Heads toward Welfare State" (2023) 11:1 (August) BESTUUR 144 at 145.

heads and definitive deputy regional heads has ended, an acting officer of the regional head will be appointed to fill it. If a vacancy occurs because the regional heads and deputy regional heads are on leave, an interim regional head will be appointed to fill the position.<sup>29</sup>

During the transition period for regional head elections in 2024, for definitive regional heads whose term of office has expired, an acting head will be appointed to fill the regional vacancy through discussion by the minister of home affairs and decided by the president. This mechanism also invites debate regarding views that consider the system to be less democratic and not in accordance with the constitution, vulnerable to politicization, and full of political interests for the agenda of winning the 2024 general elections.<sup>30</sup> This view departs from the assumption that regional leadership by officials elected and appointed by the president can be filled by people who are close to the president or a coalition of the president's political parties. There are concerns about the potential for presidential intervention in the policies of officials appointed in the regions, including regarding the neutrality of the acting regional heads in holding the 2024 general elections.

Meanwhile, the ideal measure that is the main requirement for occupying the position of regional head is having adequate leadership qualities. Acting officer of regional heads are not only required to have the ability to administer government but also must be figures who understand the character of their region and receive public recognition, as well as being able to maintain political stability ahead of 2024, thereby having a positive impact on society.<sup>31</sup> This is a manifestation of the spirit of reform and implementation of Article 18 of the 1945 Constitution so that every policy related to regional autonomous government and regional leadership must be able to reflect the mandate of the people and be for the welfare of the people.

An indication of the acting regional heads' attachment to the central government as the appointing authority is seen in the 2023 domestic

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<sup>29</sup> Rahmazani Rahmazani, "The Problems of Appointment Acting Officer of Regional Head in the Transition Period Before the Election of 2024: Problematika Pengisian Jabatan Penjabat Kepala Daerah di Masa Transisi Pra Pilkada 2024" (2023) 20:2 JK 196–215 at 201.

<sup>30</sup> Ismed Kelibay et al, "Dinamika Pemilihan Kepala Daerah Serentak Nasional Dalam Pemilihan Umum Tahun 2024" (2022) 7:2 j noken ilmu-ilmu sos 167–181 at 178.

<sup>31</sup> Rais Agil Bahtiar, "Kebutuhan Penjabat dalam Pengisian Kekosongan Jabatan Kepala Daerah, Kajian Singkat Terhadap Isu Aktual dan Strategis" 14:8/II/Puslit/April/2022 Pusat Penelitian Badan Keahlian DPR RI.

regulations provisions, according to which acting regional heads are responsible for the president and minister of home affairs. The central government can also dismiss and replace these officials based on performance evaluation results. Apart from that, the authority of an acting regional head is the same as a definitive regional head, but certain duties and authorities can only be performed if written approval is obtained from the Minister of Home Affairs. These duties include employee transfers, cancellation of permits issued by previous officials, issuance of permits that conflict with permits issued by previous officials, making regional expansion policies that conflict with previous officials' policies, and making policies that conflict with the policies of previous governments and officials.

The appointment of a replacement regional head can also be accomplished by appointing a temporary official. In this case, the Minister of Home Affairs appoints a temporary official to carry out the duties of a definitive regional head who is on leave as regulated by the regional head election law and the 2018 Minister of Home Affairs regulation regarding regional head leave outside the state's responsibility. In terms of performance implementation, temporary regional heads are the same as acting regional heads; namely, they are responsible to the central government in carrying out their duties and authorities, and certain tasks and authorities can only be carried out if they receive written approval from the Minister of Home Affairs. For example, to lead the implementation of affairs government established by regional parliament, facilitating the holding of definitive regional head elections, maintaining the neutrality of the state civil apparatus, and discussing and enacting draft regional regulations.

It can be concluded that the position of acting regional heads and temporary regional heads is a form of continuity from the previous definitive regional heads. Many things must be considered in filling the vacancy in the position of regional head, one of which is considering the democratic side, which is interpreted as the representation of the people through direct elections or indirect elections carried out by the people's representative institutions as guaranteed by the constitution.<sup>32</sup> If the appointment authority is completely handed over to the central government, there will be the

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<sup>32</sup> Joko Riskiyono, "Partisipasi Masyarakat Dalam Pembentukan Perundang-Undangan Untuk Mewujudkan Kesejahteraan" (2015) 6:2 *Aspirasi: Jurnal Masalah-Masalah Sosial* at 160. and Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme* (Jakarta: Sinar Grafika, 2010).

potential for the birth of a centralized government like the New Order government, which is considered not in harmony with its people.<sup>33</sup>

Even if the position of the regional head is replaced with a temporary acting one, it cannot be separated from its democratic side as the holder of the people's trust in the previous period. This means that the acting officer of the regional head must temporarily be able to continue the community mandate attached to the regional head in the previous election, related to the continuity of the vision and mission in the development program. They must not be not permitted to form a new program that annuls the vision and mission of the previous regional head.<sup>34</sup> The appointment of officials to fill the vacancy in the position of regional head must be given to people who understand the will of the people and the conditions in their respective regions, which have been entrusted to the regional head in the previous election.

#### **IV. DEMOCRATIZATION OF THE SYSTEM FOR APPOINTING ACTING OFFICER OF REGIONAL HEAD**

The vacant position of regional the head during the transition period for holding simultaneous regional head elections in 2024 has given rise to considerable debate because of the number of acting officers of regional heads appointed during that period. From 2022 to 2024, the total number of acting regional heads appointed at the provincial, regency, and city levels is 270,<sup>35</sup> Each serves for a relatively long term of office, often more than two years, a duration exceeding half the term of office of the definitive regional head. Another controversial debate is that the mechanism for appointing acting officers during the transition period was not transparent or democratic.<sup>36</sup> Even the Constitutional Court through its decision number 67 of 2021, advised the government to issue special implementing regulations regarding the mechanism for filling vacancies and make available

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<sup>33</sup> Indonesia Investments, "Indonesia New Order Miracle - Suharto's Presidency - Orde Baru | Indonesia Investments", (2023), online: <<https://www.indonesia-investments.com/culture/economy/new-order-miracle/item247>>.

<sup>34</sup> Riskiyono, *supra* note 31 at 161.

<sup>35</sup> Eko Prasajo, "Legitimasi Penjabat Kepala Daerah", (9 May 2022), online: [kompas.id <https://www.kompas.id/baca/artikel-opini/2022/05/09/legitimasi-penjabat-kepala-daerah>](https://www.kompas.id/baca/artikel-opini/2022/05/09/legitimasi-penjabat-kepala-daerah).

<sup>36</sup> M Riadhussyah et al, "The Dignity of Democracy in the Appointment of Acting Regional Heads by the President: Legal Construction After the Constitutional Court Decision Number 15/PUU-XX/2022" (2022) 12:1 jurisprudence 106–119 at 110.

procedures for appointing acting officers that are transparent and measurable, without ignoring democratic principles.<sup>37</sup>

The 2023 Minister of Home Affairs Regulation as the implementing regulation, only appears to be transparent regarding the requirements and nomination of candidates for office, while the discussion and determination stages for elected officials are not regulated openly and measurably. The Minister of Home Affairs and regional parliaments (as well as special governors in appointing regional heads at the regency and city levels) will each propose three candidates for acting officer of regional heads. These candidates will come from the state civil service, have experience in government with good performance, and have high-level leadership positions of Echelon 1 and Echelon 2 under the criteria and qualifications for positions regulated in the state civil service law in Indonesia.<sup>38</sup> Next, the Minister of Home Affairs will discuss the candidates for office and determine the final three candidates to proposed to the president. Finally, one candidate will be appointed as the acting officer of the regional head. The problem with this process of discussing and appointing elected officials is that there are no measurable and transparent rules. It does not involve any form of people's representation, either through direct community participation or through the participation of representative institutions.<sup>39</sup> This undemocratic mechanism ultimately impacts the authority of the president through the Minister of Home Affairs to appoint acting regional heads at the provincial, regency, and city levels. This system creates opportunities for potential collusion and nepotism in the central government due to conflicts of interest between the appointer and the appointee.<sup>40</sup>

This is also supported by the weak requirements, which are only limited based on position qualifications. The regional head position at the provincial level is filled by state civil servants with high Echelon 1 positions,

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<sup>37</sup> Azyumardi Azra, "Demokrasi, Hukum, dan Penjabat Kepala Daerah - Kompas.id", online: <<https://www.kompas.id/baca/opini/2022/07/28/demokrasi-hukum-dan-penjabat-kepala-daerah>>.

<sup>38</sup> William RI Sopaheluwakan et al, "Two-decade decentralization and recognition of customary forest rights: Cases from special autonomy policy in West Papua, Indonesia" (2023) 151 *Forest Policy and Economics*.

<sup>39</sup> Siboy et al, *supra* note 27 at 146.

<sup>40</sup> Thomas Power, Eve Warburton & ISEAS-Yusof Ishak Institute, eds, *Democracy in Indonesia: from stagnation to regression?*, Indonesia update series (Singapore: ISEAS Yusof Ishak Institute, 2020). and Christo Sumurung Tua Sagala et al, eds, *Demokrasi dalam Kenegaran*, 1 (Jember: Jember University Press, 2023).

based on the law on state civil servants categorized as "middle high leadership positions." These positions include ministry secretary, principal secretary, secretary general of state agency secretariat, secretary general of a non-structural agency, director general, deputy, inspector general, chief inspector, head of an agency, ministerial expert staff, head of the presidential secretariat, head of the vice presidential secretariat, presidential military secretary, head of the secretariat presidential advisory board, provincial regional secretaries, and others in equivalent positions.

The acting officers of regional heads at the regency and city levels are filled by state civil servants with high Echelon 2 positions, categorized as "Pratama high leadership positions." These positions include director, bureau head, deputy assistant, secretary of the directorate general, secretary general of the inspectorate, secretary of the head of the institution, head of the central office, inspector, head of the large hall, assistant provincial secretariat, regency/city regional secretary, head of provincial agency/head of a provincial institution, secretary of the regional parliament, and other equivalent positions.<sup>41</sup> The central government also does not fully adhere to these requirements, with several regional heads appointed not from the State Civil Service but from the active military and police.<sup>42</sup> For example, the appointment of Brigadier General Andi Chandra As'aduddin, the Head of the State Intelligence Agency (BIN) for Central Sulawesi as acting officer of regional head of West Seram Regency, has drawn considerable debate, as it is considered to violate regulatory norms. The appointment of active military or police as acting regional heads is also considered a bad precedent<sup>43</sup> which returns Indonesia to the dual-function era of the Indonesian Armed Forces (ABRI) during the New Order government<sup>44</sup> which will strengthen the central government's<sup>45</sup> This refusal was responded to by Mahfud MD as

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<sup>41</sup> Tohadi, "Pengangkatan Penjabat Kepala Daerah yang Berasal dari anggota Tentara Nasional Indonesia dan Anggota Kepolisian Negara Republik Indonesia dalam Sistem Hukum Indonesia (Studi Kasus Pengangkatan Komjen Pol Mochammad Iriawan Sebagai Penjabat Gubernur Jawa Barat)" (2018) 6:1 JHR 68 at 82.

<sup>42</sup> Ibid at 83.

<sup>43</sup> Erik Prasetya, "Perwira TNI jadi penjabat kepala daerah, dwi fungsi TNI/Polri terulang kembali?", BBC News Indonesia, online: <<https://www.bbc.com/indonesia/indonesia-61576564>>.

<sup>44</sup> Otto Gusti Ndegong Madung & Winibaldus Stefanus Mere, "Constructing Modern Indonesia Based on Pancasila in Dialogue with the Political Concepts Underlying the Idea of Human Rights" (2021) 5:1 JSEHR 1 at 9.

<sup>45</sup> Edward Aspinall & Greg Fealy, eds, Soeharto's New Order and Its Legacy: Essays in honour of Harold Crouch, 1st ed (ANU Press, 2010). and Andrew Reynolds, Ben Reilly & Andrew Ellis, Electoral System Design: The New International IDEA Handbook, Handbook series (Stockholm, Sweden: International

Coordinating Minister for Political, Legal, and Security Affairs and Junimart Girsang as Deputy Commission II of the central parliament by referring to the provisions of the regional head election law: anyone who serves as a high leader can be appointed as acting head.

This incident resulted in a lawsuit regarding the norms for the qualification requirements for acting regional head in the Constitutional Court, case number 15 of 2022. The decision stated that filling the position of regional head with military soldiers and police officers was carried out in accordance with statutory regulations regarding the military and police and submitted to the central government. The most important factor that must be considered when appointing acting officers is that they must appoint officials who have a complete understanding of the ideology of Pancasila and the unitary state of the Republic of Indonesia and a good understanding of national politics. Apart from that, the person concerned must also have government managerial competence, so they can fulfill the hopes and desires of the people in their respective regions during their temporary leadership period. There is also an opportunity to fill high leadership positions with military soldiers and police officers after resigning from active service, in accordance with the competencies determined through open channels and a competitive process.<sup>46</sup> In the end, however, none of the measures in accordance with the Constitutional Court are stated in the regulations regarding the appointing system for acting regional heads.

Feri Amsari also emphasized that the appointment of active military is contrary to the Constitution, the law on the military, the law on the police, and the decision of the Constitutional Court. This is because the Constitution explicitly states that the duties and functions of the military and police are for state defense and security, not for regional government administrators. The law on the military and the law on the police also prohibit active members of the military and police from filling positions that are not specified in the law, unless explicitly specified, such as serving in the National Search and Rescue Agency and the National Narcotics Agency.

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Institute for Democracy and Electoral Assistance, 2005) at 5. Which says that an electoral system can produce a government based on a coalition or minority government, but there are also other electoral systems that allow just one party to gain majority control.

<sup>46</sup> C N N Indonesia, “5 Aturan versi Pemerintah yang Sahkan TNI/Polri Jadi Pj Kepala Daerah”, online: nasional <<https://www.cnnindonesia.com/nasional/20220525202230-12-801299/5-aturan-versi-pemerintah-yang-sahkan-tni-polri-jadi-pj-kepala-daerah>>.



This prohibition was also strengthened by several Constitutional Court decisions regarding the acting officer of regional heads, namely decision number 67 of 2021, number 15 of 2022, and number 18 of 2022.<sup>47</sup>

The entire series of events and controversial debates should be used as material for reflection for continuous evaluation and improvement. Democratization in the system for appointing acting regional heads is non-negotiable,<sup>48</sup> in accordance with the principles and values of the Constitution. It emphasizes the sovereignty of the people and the rule of law in the entire state administration process, including filling the position of regional head to ensure that the state administration process is carried out for the greatest prosperity of the people.<sup>49</sup> Therefore, it is necessary to update the regulations, which provide a permanent formula regarding the appointment of acting regional heads constitutionally and democratically, accounting for several factor. First, the constitutional system for filling regional head positions is currently carried out through a direct election system, as interpreted in the norms of "democratic" in the 1945 Constitution. It can be concluded that the democratic system in question is through direct or indirect elections through representative institutions.<sup>50</sup> Second, the system for filling regional head positions must reflect the principles of regional autonomy with the values of the 1945 Constitution so the regional head election system will represent the will of the people in the region.<sup>51</sup>

Third, the system for filling the position of the regional head is carried out through the election of regional heads by the regional people, the same method for selecting representative institutions in the regions. Thereby, in autonomous regions, the executive and legislative institutions are representatives of the people who have the same position and cannot face intervention by any party. Fourth, the system for filling regional head positions in accordance with the Constitution does not allow for mechanisms

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<sup>47</sup> Prasetya, *supra* note 42.

<sup>48</sup> Abdul Kahar Maranjaya, "A Mechanism for Filling Regional Heads Positions in a Democratic Manner According to Pancasila Democracy's Principle After the 1945 Constitution Amendments" (2021) 21:2 SJHP, online: <<http://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/4592>> at 245.

<sup>49</sup> Iwan Satriawan & Khairil Azmin Mokhtar, "The Constitutional Court's Role in Consolidating Democracy and Reforming Local Election" (2016) 1:1 CONSREV 103 at 107.

<sup>50</sup> Saddam Bancin, "The System for Filling the Positions of Regional Heads in Indonesia According to the Principles of Regional Autonomy" 5:2 USU Law Journal 2017 at 32.

<sup>51</sup> Firman Noor et al, "The Implementation of Direct Local Election (Pilkada) and Money Politics Tendencies: The Current Indonesian Case" (2021) 6:2 IPSR 227–246 at 228.

or stages in the regional head election system that reduce the nature and principles of democratic regional autonomy, such as the appointment of acting regional heads by the central government which is carried out behind closed doors and is not measurable.<sup>52</sup>

Meanwhile, the system for appointing regional heads is very contrary to the spirit of Indonesian democratization, with the full authority of the president together with the Minister of Home Affairs to appoint acting officers of regional heads. The process occurs behind closed doors, is not measurable, and does not involve public participation. This also means that the 2023 Minister of Home Affairs regulation has deviated from the order in the previous Constitutional Court decision, which mandates filling the position of acting regional head transparently and democratically. This decision is to avoid irregularities and arbitrary authority in the system in the present and future.<sup>53</sup>

Thus, if it is not possible to determine an acting officer of the regional head through a direct election like a definitive regional head, it must still prioritize people's representation with the availability of public participation facilities in a transparent system. This public participation can be given directly to the community or through its representatives, namely the parliamentary institution, to be involved throughout the entire process. Public participation and transparency must also be implemented in the stages of discussion and determination of potential candidates for appointment, performance monitoring and evaluation, and the process of appointing and dismissing acting regional heads.

Regarding the requirements for candidates for acting officer of regional heads, they must also prioritize the principle of regional autonomy through the competence and understanding of the acting candidates for the region they will lead. Ideally, the candidate should come from the state civil apparatus that has been serving in the relevant area for a long time, with two considerations. First, the state civil apparatus is an administrative and civil official who understands the duties and managerial functions of government and public services. Second, a state civil servant who has served for a long

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<sup>52</sup> Bancin, *supra* note 49 at 34.

<sup>53</sup> Rahmazani, "The Problems of Appointment Acting Officer of Regional Head in the Transition Period Before the Election of 2024", *supra* note 28 at 212.

time in one region and understands the culture and needs of that region so their policies will be more effective and beneficial for the region and its people.

## V. CONCLUSION

Democratization of the system for filling regional head positions is mandatory to realize accountability between regional leaders and their people following the principles and values contained in the 1945 Constitution and the spirit of reform. However, the current process of appointing acting officers of regional heads in the lead-up to the 2024 simultaneous regional head elections diverges significantly from democratic ideals. The prevailing practice, characterized by centralized decision-making by the central government, lacks transparency and public involvement, thereby harboring potential conflicts of interest between appointers and appointees. To address these shortcomings, reforming the appointment system is imperative, necessitating the engagement of community or parliamentary representatives across various stages, including proposal, deliberation, determination, monitoring, evaluation, and dismissal of acting regional heads. Moreover, candidate requirements should be refined following the principle of regional autonomy, mandating candidates to originate from the state civil service and possess extensive tenure within the pertinent region. Such criteria ensure a deeper comprehension of governmental managerial responsibilities and public service obligations, alongside a nuanced understanding of regional conditions and community needs.

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