



## Reflections and Expectations of Democracy in The Implementation of Regional Autonomy: Long - Term Potential for Appointment of Acting Regional Heads

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### Abstract

Indonesia is a democratic country that implemented regional autonomy. The era of regional autonomy has been implemented since the Indonesian government issued Law no. 22 of 1999 concerning Regional Government and has continued to this day. Many dynamics have occurred as well as challenges and achievements for this autonomy, such as local governments being able to advance programs according to their regional characteristics, even increasing cases of corruption by regional heads, and many more. Article 201 Paragraph (9) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Law Number 1 of 2014 Concerning the Election of Governors, Regents, and Mayors which has become Law Number 6 2020 concerning the Election of Governors, Regents and Mayors, mentioning that in commemoration of the deaths of the Governor and Deputy Governor, Regent, and Deputy Regent, as well as Mayor and Deputy Mayor whose term of office ends in 2022 and whose term ends in 2023, acting Governor, acting Regent, and acting Mayor is appointed until the election of the Governor and Deputy Governors, Regents, and Deputy Regents, as well as Mayors and Deputy Mayors through simultaneous national elections in 2024. Therefore, currently, many regional heads positions in Indonesia are welcomed by Regional Heads in Charge who is appointed by the Central Government by statutory provisions. This has become a polemic and the authors find that the implementation of regional autonomy has so far been suboptimal so the central government needs to further regulate the provisions for the placement of the intended Regional Heads in Charge to achieve an ideal of democracy.

**Keywords:** Democracy, Autonom, Government.

### Abstrak

Indonesia adalah negara demokrasi, salah satu bentuknya ada melalui otonomi daerah. Era otonomi daerah sejak pemerintah RI mengeluarkan UU No. 22 tahun 1999 tentang Pemerintahan Daerah dan telah berlangsung sampai hari ini. Banyak dinamika yang terjadi begitupun tantangan dan capaian seperti pemerintah daerah dapat berinovasi memajukan program sesuai ciri khas daerahnya maupun masih sering terjadi kasus korupsi oleh kepala daerah dan sebagainya. Pasal 201 Ayat (9) Undang-Undang Nomor 10 Tahun 2016 tentang Perubahan kedua atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota yang telah disempurnakan menjadi UU Nomor 6 tahun 2020 tentang Pemilihan Gubernur, Bupati dan Walikota. Menyebutkan untuk mengisi kekosongan jabatan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, serta Walikota dan Wakil Walikota yang berakhir masa jabatannya tahun 2022 dan yang berakhir masa jabatannya pada tahun 2023, diangkat penjabat Gubernur, penjabat Bupati, dan penjabat Walikota sampai dengan terpilihnya Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, serta Walikota dan Wakil Walikota melalui Pemilihan serentak nasional pada tahun 2024. Oleh karenanya saat ini telah banyak posisi kepala daerah di Indonesia digantikan dengan Penanggung Jawab Kepala Daerah yang ditunjuk oleh Pemerintah Pusat sesuai ketentuan perundang-undangan yang ada. Hal ini menjadi polemic dan penulis menemukan bahwa pelaksanaan otonomi daerah sampai saat ini kurang optimal dan pemerintah pusat perlu mengatur lebih lanjut ketentuan penempatan para penjabat Kepala Daerah dimaksud agar tercapai demokrasi yang ideal.

**Kata Kunci:** Demokrasi, Otonomi, Penjabat.

## **I. INTRODUCTION**

Democracy and the issue of autonomy are two political elements that in the constitutional system often influence the social structure of society, both in terms of service and protection of human rights. Autonomy is the process of forming democracy that was born in the struggle for state policies to overthrow totalitarian and centralist regimes and be replaced by democratic and decentralized regimes so that constitutional ideals can be realized properly. Regional heads such as governors and mayors/regents are the executors of regional autonomy. Based on data from the Corruption Eradication Commission (KPK) throughout 2019, a total of 176 regional officials were involved in corruption cases between 2004 and 2022, including 22 governors and 154 mayors/regents as well as representatives who also handle the KPK. This number does not include the number of members of the Regional People's Representative Council (DPRD). The large number of regional officials who have been arrested by the KPK is one of the factors for the high political costs. Then the Indonesia Corruption Watch (ICW) found that most cases of prosecution of corruption by law enforcement officials (APH) occurred in the village fund budget sector, namely 154 cases in 2021 with a potential state loss of IDR 233 billion. Then the village heads who are members of the Papdesi (All-Indonesian Association of Village Government Apparatuses) demonstrated on January 17, 2023, in front of the DPR RI Building, Jakarta to demand an extension of the village head's term of office from six years to nine years and asked the DPR to revise the term of office stipulated in the Law Number 6 of 2014 concerning Villages.

Corruption cases from 2016 to June 2021 in local governments reached 58 percent of a total of 312 cases, ministries/agencies 180 cases, and provincial governments 82 cases. Based on the above information about the large number of regional heads who commit corruption in various modes, it is necessary to research the analysis of the factors causing corruption perpetrated by regional heads. Factors that cause regional heads to commit corruption include Monopoly of power, policy discretion, weak accountability, and other actors such as lack of competence in regional financial management, lack of understanding of regulations, and understanding of wrong cultural concepts. Based on data from the Director General of Regional Finance of the Ministry of Home Affairs for 26 years several regions have Regional Original Income (PAD) below 20 percent and depend on the central government. An example of the corruption case for the Governor of Papua, Lukas Enembe, found initial evidence of alleged corruption worth 1 trillion rupiahs. There is no other evidence. The central government has provided Papua special autonomy funds of 1000 trillion rupiahs from 2001 to 2022 or the rowdy case of the Regent of the Meranti Islands regarding revenue-sharing funds (DBH). oil and gas (Oil and Gas) in the Meranti Islands to the Ministry of Home Affairs and the Ministry of Finance. Government administrators, both from the central executive and legislative branches, must have integrity and morals bound by ethics and governance. Government actions and political activities of legislators in the regions will thus be influenced by their respective officials

and political elites (Romdoni et al., 2022). Acting ethically means keeping promises or promises that have been made and not doing anything that is detrimental or undermines the trust of society or other people (Riwu Kaho, Yosef. 1991). Regional autonomy has been running for 26 years and is celebrated every April 25th. Of course, many achievements have been achieved in their respective regions, but in practice, as described above, regional heads do not reflect the spirit of democracy contained in regional autonomy. Government organizers In May 2022, the filling of candidates for regional heads of 5 governors, 37 regents, and 6 mayors has begun. Acting Regional Heads (PKD) will be appointed in 2022 for 101 regions and in 2023 for 171 regions. Thus, the number of PKD that must be determined by the government in 2024 is 272.

The PKD term of office until the implementation of the Simultaneous Pilkada on November 27 2024 since being sworn in plus some more time for the KPUD determination and preparation for inauguration. For example, the inauguration of the Acting Governor of DKI Jakarta came from the Head of the Presidential Secretariat, the Acting Governor of Bangka Belitung came from the Director General of Minerals and Coal of the Ministry of Human Resources and the Acting Governor of Banten came from the Expert Staff for Sportsmanship Culture at the Ministry of Youth and Sports. Acting The Governor of Central Papua from the Expert Staff of the Minister of Home Affairs for Apparatus and Public Services, the Acting Governor of Papua Mountains from the Expert Staff for Inter-Institutional Relations and International Cooperation at the Attorney General's Office, the Acting Governor of Southwest Papua from the Assistant for Development and People's Welfare of the Regional Secretary of Papua Province. Ahead of the 2024 simultaneous general elections, there are a number of definitive regional heads whose term of office is ending.

There are at least 272 regional heads consisting of 24 governors and 248 regents/mayors. So that governors or regents/mayors must be appointed immediately to fill the vacant position. Referring to Law (UU) Number 10 of 2016 concerning Pilkada, the vacant position of governor will be filled by acting governors who come from positions of middle leadership until the definitive governor is appointed. Meanwhile, to fill the vacancy in the position of regent/mayor, regent/mayor officials are appointed from high leadership positions up to the inauguration of regents/mayors. There has been resistance in several regions to the candidates for Acting ("Penjabat Kepala Daerah"/PJ) regional heads appointed by the Central Government, such as the Governor of Southeast Sulawesi (Southeast Sulawesi), delaying the inauguration of regent officials in three of his regions, namely South Buton, West Muna Regency and Central Buton. The presence of the PKD, which is a "messenger" from the central government, has caused turmoil in the community, such as regarding lawsuits and objections from the regional government, the authors see this as a breath of fresh air in the dynamics of regional autonomy in the future , if it turns out to result in progress and the achievement of democratic values then of course we need to support it, and the author will explain these things in this paper.

## **II. RESEARCH METHODS**

This paper uses a normative approach that does not examine law only in terms of statutory regulations, but covers a broader aspect, namely something that can be traced in the literature. The analytical technique used in this study is the method of analysis and hermeneutical interpretation. Hermeneutic analysis is used to understand a text as a series of signs arranged by the author to convey a certain meaning. On the other hand, interpretive analysis is used to interpret and reveal the ontological, epistemological, and axiological essences related to the purpose of this study.

## **III. RESULTS AND DISCUSSION**

### **1. Conception of Regional Autonomy**

The central government has transferred its authority (decentralization) to autonomous regional governments to regulate and manage government affairs within the unitary state of the republic of Indonesia. Delegation of authority to local governments covers various aspects of governance. There are 5 (five) bodies that are not delegated to the local government, namely Foreign Policy, Defense and Security, Judiciary, National Monetary and Fiscal and Religion. The results of the amendment to Article 18 paragraph (5) of the 1945 Constitution which states "The regional government takes care of the widest possible autonomy, except for government affairs that are stipulated by law as the affairs of the central government", this can be seen in Law Number 23 of 2014 concerning Regional Government. Regional governments (both provincial, district and city) regulate and manage their own government affairs according to regional autonomy and co-administration. This affirmation is the legal basis for all local governments to be able to run the wheels of government (including enforcing regional regulations and other regulations) (Enny Nurbaningsih, 2019). Affirmation of Law Number 22 of 1999 concerning Regional Government replaces Law Number 5 of 1974 concerning Fundamentals of Regional Government. The essence of realizing regional autonomy is regional independence (regional head and DPRD) in managing government in order to improve public services and people's welfare. The 1998 reforms by the people at that time resulted in 6 demands on the agenda including demands to implement Regional Autonomy as wide as possible (kompas.com). Law Number 14 of 2022 concerning the Formation of South Papua (South Papua Law), Law Number 15 of 2022 concerning the Formation of Central Papua (Central Papua Law) and Law Number 16 of 2022 concerning the Establishment of the Papuan Highlands (Papua Mountains Act) of Southwest Papua Province were passed, now the number of provinces in Indonesia is 38 provinces.

Autonomy area as shape decentralization government on actually addressed for fulfil interest nation in a manner whole, that is effort bring closer on purpose maintenance government for realize ambition Public which more good, Public which more good, more fair and more fair. more prosperous. However as settlement in on,

many happen corruption by head area so that area no proceed, impact to happiness the people no achieved because Indonesia there is (Marratu Fahri 2022). follow Criminal Corruption (TPK) which conducted Head Area that is: TPK in procurement goods/services which financed APBN/APBD, as much 14 case TPK in abuse budget, as much 22 case TPK in permission source power natural which no corresponding with provision, TPK Reception bribe, as much 24 case. Purpose gift autonomy to area as following:

- a. Aspect political, that is covers, distribute inspiration and aspirations people, good for interest people that alone nor for support political and political national in framework development in process democracy in level root grass;
- b. Aspect management shopping public, specifically enhancement effectiveness and efficiency shopping public, specifically in give service to Public with expand type service in various field need public;
- c. Aspect Public for increase toughness and strengthen independence Public, so that Public could independent, no too depend on Support government, and more competitive in process development;
- d. Development aspect economy, specifically for speed up implementation program development for reach well-being people which more big

Factors that may influence the success of regional autonomy in Indonesia:

- a. Human resource factor: Communities as regional government actors must be able to fulfill their responsibilities in managing regional households to achieve goals;
- b. Structural capacity of the organization: The organizational structure of the local government must be able to accommodate all the activities and tasks for which it is responsible. Ability to support community participation: Local government must be able to support community participation in development;
- c. Regional financial capacity: Regional finances must be able to support the financing of government, development and community activities;
- d. Budget factor: An appropriate budget is needed as the main tool for regional financial control;
- e. Facilitating Factor: Whatever tools are used should be able to facilitate local government activities, and
- f. Good governance: The organizational structure and responsibilities, duties and authorities must be well coordinated to achieve the objectives.

Factors that could hinder the increase in regional autonomy in Indonesia are:

- a. Political commitment: The implementation of regional autonomy by the central government has not been considered as a constitutional mandate.;
- b. Still burdened by centralization: Regions are still very dependent on the center which kills the creativity of the people and government apparatus in the regions;
- c. Gaps between regions: Gaps in the quantity and quality of human resources and intra-economic structures.;

- d. Inequality in natural resources: Regions that do not have natural resource wealth but have a high population will run out of breath when implementing autonomy;
- e. Conflict of interest: There are differences of interest that are closely related to various parties that impede the regional autonomy process, such as conflicts between the wishes of regional heads and the interests of political parties;
- f. Political will or political will: Inconsistent political will on the part of local governments to reorganize the relationship between central and regional powers;
- g. Changes in the behavior of local elites: local elites experience changes in behavior in the administration of local government because of the power they have. The above factors can be one of the indicators for evaluating lay people to see progress in a region led by their respective regional heads.

## **2. Implementation of Democracy in the Implementation of Regional Autonomy**

The effect of introducing a democratic system is changing the Indonesian constitution. One of the main changes is the policy of decentralization and regional autonomy. Dissatisfaction with the centralization of power during the New Order era caused the regions to demand autonomy. The centralized system is assumed that only the elite can prosper, while the decentralization system is expected to improve the quality of social, economic and political life of the community, but at the level of reality this is not the case. simple turn like palm. The practice of regional autonomy has not yielded the expected results. For example, the quality of household services is still low in many regions. The number of regions capable of providing world-class services in the fields of education, health and licensing is still very small, less than 10 percent of the 514 existing districts/cities. Another indicator is that the number of poor people is still very high (around 27.73 million people in 2015) and the number of people who are not working is still high (around 7.4 million people in 2015). The issue of effective governance and regional competitiveness is still being discussed and has not been seriously implemented. Decentralization has political and economic goals. Its political goals are to strengthen local government (LG), build capacity of local officials and local communities, and maintain national integration. At the same time, the aim of this business is to increase the capacity of municipalities to provide professional and accessible, efficient and effective services. From the point of view of local government, decentralization is part of the nature of power sharing which includes political, legal, and administrative aspects. Power is a limited resource of power and those same resources are still being contested. Decentralization refers to the transfer of power to lower levels of the territorial hierarchy.. Decentralization can be done through decentralization, delegation and decentralization. decentralization as the transfer of powers and responsibilities or powers to carry out part or all of the administration and functions of the central

government and its agencies, state officials or autonomous business entities; functional position in regional responsibility; and NGOs.

Regional autonomy is a form of decentralization. Article 1 of Law no. 32 of 2004, decentralization is the transfer of governmental power from the government to autonomous regions to regulate and manage government in the system of the unitary state of the republic of Indonesia. The opposite of centralization is a system of government in which all power is centralized. So far, in 2022 Indonesia has experienced indirect centralization such as centralization based on law number 23 of 2014 which leads to 6 (six) things, namely strengthening presidential power, the principle of division of labor, relations with the utilization of natural resources, administrative difficulties, legal steps to abolish regional regulations, and annexes to laws governing the division of functions between the central, provincial and district/city governments. The practice of decentralization which must be managed according to the principles of good governance tends to produce things as follows:

- Lack of coordination between district/city and provincial governments, even with the central government.
- Lack of coordination in the implementation of Development Works at the district/city level and linkages with the province as a core region.
- Governance (good governance) still political rhetoric

The potential for ignoring professionalism in administering government The consequences above must be ended. Because it is far from the goal of providing decentralization with the principles of good governance. Such consequences are clearly very bad for efforts to achieve human welfare. It can even be said that people's welfare and democracy will go further to achieve democratic government. Factors causing business failures in the regions include bureaucracy related to legal certainty over land, low regulatory certainty. Until now, these factors often occur and are found

Draft democracy specifically system manage in government always put people on position which very strategic in system state administration, although there is difference between country in level implementation. Because variant implementation democracy which different, so known a number of term democracy in literature state, that is democracy constitutional, democracy parliamentary, democracy managed, democracy pan-secretary, democracy people, democracy soviet, democracy national, and etc. Values which must fulfilled for criteria democracy is:

- a. complete dispute in a manner peace and volunteer;
- b. replacement ruler in a manner regular and own framework time so that no authoritarian;
- c. use coercion which minimal;
- d. confession and not quite enough answer on score obligation;
- e. enforce justice;

- f. advance knowledge knowledge; and
- g. confession and respect to freedom for carry out all criteria, principle, score and elements democracy the in on, needed institutions as following:
  - government which responsible answer;
  - Board Representative People which represent class and interest people chosen through collection voice in a manner free and confidential based on at least two candidate for every chair. Council/representative this do supervision (oversight) which possible exists opposition which constructive and evaluation sustainable to policy government.
  - Organization political which consists from one or more party political. Party guard connection regular Among public and leader they. Pers and media mass free Secrete his opinion;
  - system Justice which independent for ensure right basic man and ensure justice. This is mechanism main power which proposed by draft democracy, which based on principle unity and equality man.

Democracy, regional autonomy and government in Indonesia are influenced by many things such as the political system, government and representation system. There are several strategic factors that also influence regional autonomy, such as innovation, regional head elections, transnational politics, leadership, intra- and inter-regional relations, and these factors must be integrated in the national context and inter-regional relations. central area. The relationship between the center and the regions creates its own problems and eventually leads to regional autonomy a la Indonesia

Some regions feel that they have been taken over by the central government. political dynamics and instability, such as the emergence of the Aceh Merdeka movement, the Republic of South Maluku and the Free Papua Movement. or the case of the Regent of Meranti threatening to take up arms or the Governor of North Sumatra making a fuss over regional debt. It is not uncommon for these areas to have significant natural and mining resources. As we all know, Aceh is a producer of oil and gas, and Papua is the producer of the world's largest gold mine, namely PT Freeport. people are not prosperous and infrastructure is lacking. It seems that their wealth is only used to develop the central region, while owners of mines and natural resources do not get progress and prosperity. That gives rise to all kinds of contradictions. There is a vertical power conflict, especially between the central government (represented by the governor in this case) and the city/district government. Under the SEZ self-governing law, the authority of the provincial government relates to government affairs, and also the authority of the regions through the districts/cities. The position of competition in the area is followed by derivative regulations with Government Regulation Number 28 of 2018 concerning Regional Cooperation and technically revised according to Minister of Home Affairs Regulation No.22 of 2020 Regional Autonomy. The existence of horizontal conflicts



between local political elites then had an impact on the performance of the local bureaucracy, thereby exacerbating the situation. The ratification of the GDPA takes too long to cause slow development, disrupt the administration of government, especially in the utility sector at a lower level such as basic services, disrupt the supply of goods and services, the provision of public utilities, political polarization, mutual suspicion between officials, politicization of the bureaucracy, inefficient government. If we look at the concept of democracy above, we can see that democracy is felt in some regions not running optimally, we see that the funds provided by the central government have been used carelessly by some regional heads. commit acts of corruption. for personal gain and as a result people do not get what they deserve.

At present, we still feel that economic inequality is very uneven in regions in Indonesia. Economic inequality is the difference in economic development between one region and another vertically and horizontally which causes disparity or uneven development. One of the goals of regional economic development is to reduce inequality (Rs, Prawidya H., and Aulia R. Syahputri, 2016) North Maluku is a province with the highest economic growth in Indonesia in the second quarter of 2022. According to data from the Central Statistics Agency (BPS) for growth, Gross Regional Domestic Product (PDRB) at constant prices (ADHK) in the province reached 27.74% on an annual basis (year-on-year/yoy) (dataindonesia.id) A total of 14 provinces had economic growth above the average nationally, while 20 other provinces have growth below the national average. The province with the lowest economic growth was West Sulawesi which grew 2.13% (yoy) in the second quarter of 2022. On top of that, East Nusa Tenggara and East Kalimantan grew 3.01% (yoy) and 3.03% (yoy),

Furthermore, the author also explores the implementation of regional autonomy, which has not been optimal so far, resulting in the Law Number 11 of 2020. There are many advantages and disadvantages from the abolition of the distribution of permits. In its implementation, the Job Creation Law removed a number of tasks and powers that had previously been given to regional governments by various laws to the relevant ministers. In the latest Job Creation Law, regional governments are expected to delegate functions and authorities from the government, such as:

- Removing the function of local governments to manage coastal areas Article 20 of Law no. Regulation No. 27 of 2007 on the Management of Coastal Zone and Islands previously allowed local governments to issue permits to manage commercial and locations in the area. The Job Creation Law then modified it by delegating licensing duties to the central government.
- taking over pricing power from local government. Electricity Law No. 30 of 2009 stipulates that local governments and the Regional People's Representative Council (DPRD) have the authority to set electricity prices for consumers. This agency was abolished in the Job Creation Law and left entirely to a central

government agency. The abolition of this authority indicates a change in the implementation of regional autonomy in the administration of electricity.

- abolish local self-governing bodies responsible for regulating local markets. Article 90 of Cultivation Law no. Regional Regulation No. 13 of 2010 empowers local governments to maintain a balance between supply and demand for horticultural products at the regional level. This power is removed by the Job Creation Law. This cancellation will strengthen Indonesia's commitment to the World Trade Organization (WTO) not to interfere in the horticultural market.
- issue business licenses under central government control. The Job Creation Law removes the right of regional governments to issue business licenses in their area, such as livestock business permits which were previously regulated in the Livestock Law No. 19 of 2009 and animal health, as well as existing commercial licenses in the food sector ordered in Law Number 18 of 2012 concerning Food Ingredients. This can be seen in PP No. 5 of 2021 concerning Implementation of Risk-Based Business Licenses and other KK Legislations.
- Removing the authority of site managers to ensure compliance with company regulations in carrying out environmental restoration. Every business engaged in a certain field must try to repair the environmental damage caused by its business activities. Restoration aims to restore the environment from business impacts through the allocation of funds to ensure the restoration of environmental functions. However, the authority to decide on a guarantee fund rests entirely with the central government through the Job Creation Law. Only the central government can appoint a third party to carry out environmental restoration.

The impact of certain restrictions on the authority of various local government agencies will have implications for several aspects of regional government administration. On the one hand, this model can overcome the complexity of synchronizing central and regional regulations in regional autonomy. The simplification of regulations through the Job Creation Law still allows city governments to participate in resolving problems in the regions and not just leave it to the central government because it still involves city government, environmental approval processes, etc. This is intended so that the government can carry out its duties and authorities in matters closest to it. The central government exercises its functions and powers only when necessary. The Job Creation Law aims to overcome overlapping problems between the center and regions as well as between government agencies by centralizing power. Regional autonomy must be very careful, because seeing cases where the emergence of absolute regional autonomy authority has caused a change in the position of governor, mayor or regent, giving the impression of being a lesser king in the region. Regional autonomy that is being implemented in Indonesia has also violated it from a governance perspective. The president cannot rebuke regional heads who do not carry out their programs. But

unfortunately, when there are cases in the regions, it is the president who is blamed. In the end, everyone blamed the president for the usual school riots. In fact, school development is the responsibility of the region. The Otda phenomenon is an example of how Indonesian law is not in line with the openness of the 1945 Constitution.

### **3. Appointment of Acting Regional Head**

In 2022 there will be 101 regional heads whose term of office will end. Of the 101 regional heads, 7 of them are governors, 76 regents and 18 mayors. Because regional head elections will take place simultaneously in 2024, then automatically, there will be no regional head elections in 2022. This means that the 101 Regional Heads will be filled by Acting Regional Heads who rule until the 2024 Simultaneous elections. In 2023, there will be 17 Governors, 38 Mayors and 115 Regents. At present the central government appoints PKD, the majority of whom have civil servant status from the central government. The legal norms governing the appointment of PKD are as follows (news.detik.com):

- a. Law 23/2014 concerning Regional Government
- b. Law 5/2014 concerning State Civil Apparatus
- c. Law number 10/2016 in particular Article 201 paragraph 9 concerning the appointment of PJ to fill the vacancy for the Regional Head
- d. PP Number 49 of 2008 concerning the Third Amendment to Government Regulation Number 6 of 2005 concerning Elections, Ratification of Appointments and Dismissals of Regional Heads and Deputy Regional Heads

The background for the appointment of civil servants (PNS) as PKD is of course the fact that civil servants have experience and professionalism in public policy and public administration. This is intended so that the wheels of government, public services and development can run smoothly. Law No. 10 of 2016 Concerning the Second Amendment to Law No. 1 of 2015 Stipulates a Government Regulation in Lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents and Mayors empowering the government to appoint provincial PKD from mid-level leadership positions, district/city PKD originating from pratama high leadership positions (Article 201 paragraphs 10 and 11), up to the inauguration of governors, regents and mayors as a result of simultaneous regional head elections in 2024

Civil servants with the rank and status of civil servants (ASN) are career civil servants who often occupy positions based on expertise, professionalism and bureaucracy. Meanwhile, because of its position as the head of an autonomous region, the PKD is a statesman who has political and governmental power in the region. Differences in the positions of PNS and PKD can lead to controversy over the political legitimacy of regional government administration. What is the legitimacy of a civil servant who is appointed as PKD, while PKDD members are political leaders who are directly elected by the people.

Within the framework of this speech, several problems may arise, such as the very long duration of the PKD mandate, more than half of the regional president's term of office is directly elected by the people. The length of this tenure certainly greatly influenced the level of public accountability and PKD acceptability, the results of which could be positive or negative, for example, the cancellation of citizens' participation back into the New Order government system. From a technocratic point of view, senior civil servants (*madya* and *pratama*) are those who have gone through a long process of developing knowledge and experience in government affairs. This will ensure professionalism in development planning, budgeting and implementation. Therefore, it is possible to increase government efficiency in the form of improved public services and high development outcomes. However, in terms of democracy, the level of acceptance of PKD in the eyes of DPRD members and the general public can of course be questioned, because election results are not considered regional, but central. Each person. This is of course a matter of the political support of the DPRD and the community for various development programs. What if the approval of the development budget is blocked by the DPRD for two years. Of course this controversy was undermined by active political interests, and if the PKD, by the way, is a servant of the community, it can indeed bring tremendous progress to the region. Is it necessary to hold direct regional elections to elect regional presidents if the mapping of civil servants by the central government such as the PKD shows significant progress in the regions ? ? This factor also contradicts the DPRD's resistance to PKD. The democratic and technocratic aspects of establishing PKD have become an interesting laboratory for politics and local government, while at the same time carrying the risk of failure in the administration of regional government.

PKD's authority in the regulation is not explicitly stated. In fact, the prohibition that is regulated precisely in Article 132 Paragraph 1 and 2 PP Number 49 of 2008. This article mentions various PKD prohibitions:

- carrying out employee transfers;
- cancel permits issued by previous officials and/or issue permits that conflict with permits issued by previous officials;
- making policies on regional expansion that are contrary to the policies of previous officials; and
- create policies that conflict with previous government policies and official development programs. However, this ban can be revoked after obtaining written approval from the Minister of Home Affairs. In addition to stopping the implementation of policies in an area, this also has the potential for political intervention.

The ambiguity of authority related to the banning of PKD includes risks in decision-making and strategic policies as stated in Law Number 30 of 2014 concerning State Administration, namely organizational, staffing and budgetary aspects; potential conflict

with DPRD due to competition between politicians and political parties; toughness and toughness in filling ASN positions; and stagnation of public services. For this reason, it is necessary to amend the law in the PP regarding the authority and implementation of PKD tasks. The President as the holder of government power according to the 1945 Constitution of the Republic of Indonesia Article 4 Paragraph 1 can make decisions and assign tasks to the appointed PKD. This authority is mandatory and in accordance with Law Number 30 of 2014 concerning State Administration. Through delegation of authority, PKD can make various strategic policies and be responsible for the legal consequences that arise to ensure government effectiveness. (fia.ui.ac.id)

The rules for filling in officials use Article 201 paragraph (9) of Law Number 10 of 2016 which was amended by Law Number 6 of 2020 concerning the Election of Governors, Regents and Mayors. Article 201 paragraph 9 reads: To fill the positions of governor and deputy regent, regent and deputy regent, as well as mayor and deputy mayor whose term of office ends in 2022 in accordance with paragraph 3 and whose term of office ends in 2023, governor officials, regent officials and acting mayors are appointed until the election of governors and deputy governors, regents and deputy regents, as well as mayors and deputy mayors through simultaneous elections at the state level in 2024. Furthermore, paragraph (10) stipulates filling governors, acting governors temporarily from high school leadership positions . Furthermore, in paragraph (11) it is stated that the official regent/mayor is appointed to fill the vacant position of regent/mayor from high leadership positions up to the appointment of the regent/mayor. Furthermore, Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Provisions for Government Regulations in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors which became law, Article 201 paragraph 8 and 9, which stipulates that to fill the position of governor, governor officials are appointed starting from the position of high school principal up to the appointment of governors in accordance with the provisions of laws and regulations. Furthermore, Article 9 states that regents/mayors are appointed to fill vacant regent/mayor positions starting from high leadership positions up to the appointment of regents/mayors in accordance with statutory provisions.

Law on State Civil Apparatus number 5 of 2014 article 19 provides a reference. Primary High Leaders who are entitled to become Acting Regents/Mayors are directors, Bureau Heads, Deputy Assistants, Secretary to the Directorate General, Secretary to the Inspectorate General, Secretary to the Head of Agency, Head of Center, Inspector, Head of Balai Besar, Assistant Secretary of Regional Secretariat, Regional Secretary. / City, Head of Service / Head of Provincial Service, Secretary of the Regional People's Representative Council (DPRD) and other equivalent positions. Then who is eligible to apply for the position? In Permendagri Number 1 of 2018, Article 5 paragraph (2) The acting regent/mayor as referred to in Article 4 paragraph (3) is appointed by the minister at the

suggestion of the governor. To clarify this article, Article 4 paragraph (3) states that the Acting Regent/Mayor as referred to in paragraph (1) comes from high pratama officials at the Provincial Government or the Ministry of Home Affairs. Furthermore, Article 5 Paragraph (3) states that in order to carry out national strategic interests, the Acting Regent/Mayor as referred to in paragraph (2) may be appointed by the minister without a recommendation from the governor (Syarifuddin Usman, 2022). The procedure or mechanism for placing regional heads is regulated in Permendagri Number 74 of 2016 juncto Permendagri Number 1 of 2018 concerning Leave Outside State Responsibilities for Governors and Deputy Governors, Regents and Deputy Regents and Mayors and Deputy Mayors. The two Permendagri refer to the provisions for the position of regional head regulated in Law Number 10 of 2016. The authority to carry out the duties of regional heads refers to Government Regulation Number 49 of 2008 concerning the Third Amendment to Government Regulation Number 6 of 2005 concerning Elections, Ratification of Appointments and Dismissal of Regional Heads and Deputy Regional Heads. Then the performance evaluation of regional head officials refers to Government Regulation Number 6 of 2005 concerning Elections, Ratification of the Appointment and Dismissal of Regional Heads and Deputy Regional Heads.

#### **4. Lawsuit Against the Existence of PKD**

In June 2022, a number of civilians filed a lawsuit against the government at the Jakarta Administrative Court (PTUN). In case Number 422/G/TF/2022/PTUN.JKT, the President and Minister of Home Affairs were sued for not issuing regulations regarding the arrangements for the chief executive of special areas. The plaintiffs include the Democracy Association and Foundation (Perludem), Main Director of WALHI Jakarta Suci Fitriah Tanjung, Ardhito Harinugroho and Lilik Sulisty. The plaintiffs allege:

- a. The president's failure to issue regulations implementing the appointment of executive officers constituted an illegal act by a government official. Issuance of implementing regulations must be in accordance with Law no. October 2016, namely Articles 201 and 205, as well as the Constitutional Court Decision No. 67/PUU-XIX/2021 and No. 15/PUU.-XX/2022.
- b. The inauguration of Jokowi and Tito as well as the appointment of 7 governors, 16 mayors and 65 regents between 12 May to 25 November 2022 are considered to contain elements of a strategy of violence. declared illegal by government agencies.
- c. asked the Jakarta State Administrative Court to declare the removal and inauguration of the 88 regents illegal. there are 3 reasons for the plaintiffs suing (legalsupport.or.id): October 2016, it is necessary to align clear and measurable mechanisms and requirements regarding the recruitment of regional managers and jurisdictional boundaries. This responsibility is regulated in Article 205 C of Law no. October 2016, MK Decision No. 67/PUU-XIX/2021 and MK Decision No. 15/PUU-

XX/2022. Finally, it is reinforced by the recommendations of the Indonesian Ombudsman.

- d. The President's neglect of legal responsibility to formulate implementing regulations has resulted in widespread controversy regarding appointments in various regions. In various regions, unilateral appointments by the central government without clear conditions and mechanisms have met with opposition from the public and even local regional authorities, such as the people. appointed regent. / mayor . The government stated that;
- e. The appointment of incumbent regional heads, even if in large numbers, is an ordinance in the Pilkada law because the regional elections are held simultaneously in 2024, therefore this ordinance applies in accordance with procedures.
- f. All requests, duties and powers of the Regional Governor are authorized to refer to the Pilkada Law and the Regional Government Law which were recommended by the Constitutional Court in the section "Considering Constitutional Court Decisions" for the purposes of the PKD identification process. taking into account the aspects of participation, transparency and accountability.
- g. that these aspects have been complied with by the latest procedures that apply to the determination of PKD. The procedure is to adjust the proposals of 3 candidates for DPRD members who are considered to represent the will of the people, to be further verified and submitted to the Final Study Group meeting before the Minister of Home Affairs (for regents). /mayor) and the President (for governors) who decides).
- h. Respond to the previous Indonesian Ombudsman and explain his position that mismanagement is not proven. In addition, the Ministry of Home Affairs discussed with the Indonesian Ombudsman (ORI) regarding the establishment of a Provisional Law in the form of LAHP on July 19, 2022. The Ministry of Home Affairs officially sent a response on August 1, 2022. 2022 contains facts , regulations and analysis accompanying supporting documents for appointed officials meeting all requirements
- i. Currently preparing technical regulations for the appointment of Acting Act. Head of Region (AP).

The Constitutional Court did not grant the petition for review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Amendments to Government Regulations in Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors to become law (law election). Petitioner Article 201(9) and its elucidation as well as Articles 201(10) and (11) of the Pilkada Law contradict Article 1(2), Article 18(4), Article 18A and Article 28 D( 2). (1) The 1945 Constitution The Court is of the opinion that the petitioners' proposal does not meet the formal requirements, so that the proposal must be declared contradictory. In the legal

considerations referred to in the considerations of the Constitutional Court Number 67/PUU-XIX/2021, the Constitutional Court Decision Number 15/PUUXX/2022 and the Constitutional Court Decision Number 18/PUU-XX/2022, it is sufficient to clearly answer the constitutional issues being sued by the Petitioner. According to the Constitutional Court, the Petitioners should fully understand the three decisions of the Constitutional Court, so that the Petitioners are not afraid of lawsuits and injustice against the Petitioners due to the appointment of incumbent regional heads. This is because, in principle, the Court has provided guidelines regarding the mechanisms and procedures for appointing regional heads to be carried out by the government. Based on the Constitutional Court's decision, the essence of the norms of Article 201 paragraph (9) and its explanation, Article 201 paragraph 10 and Article 201 paragraph 11 of Law 10/2016 actually provide legal certainty in terms of filling the term of office. regional managers in order to guarantee the fulfillment of public services on an ongoing basis and achieve community welfare in the regions. So in the transition period, as one of the core decisions, it was emphasized that filling the positions of low-level regional heads is a must in order to ensure the fulfillment of regular public services and the achievement of community welfare. in the area.

In the consideration of the Constitutional Court, it was explained:

Filling in the positions of regional head officials during the transition period towards simultaneous national regional head elections (pilkada) in 2024 is the policy of the legislators, namely the government and the DPR. Acting governors are officials from middle-high officials, while regents/mayors are officials from high pratama officials. As long as a person is serving as a senior or high-level leader, the person concerned can be appointed as an official regional head. Filling in high leadership positions for TNI soldiers and members of the Police after being injured as a result of active service according to the needs and according to the competencies determined through an open and competitive process. Middle-high officials and high-ranking pratama officials who are appointed as governors and regents/mayors must be able to carry out the functions mandated by Law Number 5 of 2014 concerning the State Civil Apparatus (ASN) in accordance with the scope of their positions. such as when he was appointed as acting regional head. This is so that the wheels of local government administration can run as they should.

- governors, regents and mayors as part of ASN positions are bound by ASN principles in carrying out their functions, one of which is the principle of neutrality. This means that every ASN employee does not take sides with influence in any form, prioritizes anyone, and is the responsibility of the Prosecutor.
- Regional Head to maintain ASN neutrality. Regional head officials must have good governance managerial competence, so that in carrying out leadership as regional



heads temporarily they can fulfill the expectations and desires of the people in their respective regions. Acting regional heads must also be able to work closely with the DPRD.

- In the process of appointing regional head officials, the government must first pay attention to the real conditions of each region and the needs of regional head officials who meet the requirements as regional head officials and pay attention to regional interests and can be evaluated periodically by appointed officials. This will produce executors for regional heads who fulfill the requirements to lead their respective regions temporarily until there is a definitive regional head based on the results of the 2024 simultaneous regional head elections nationally.

The author considers that the existence of PKD is appropriate to fill this void and maybe in the future if the leadership results are good with all regional achievements then it is not impossible that PKD can be implemented in higher regulations which are explicitly more permanent.

#### IV. CONCLUSION

In several regions of Indonesia, it is felt that a sense of democracy is not running optimally, it can be seen that the funds provided by the central government have been used by some unscrupulous regional heads to carry out acts of corruption for personal gain and not benefiting the people. what should they get? As a result of or with the existence of PKD, it is hoped that it can fix things that are not functioning optimally at the behest of the central government. Technically, the fuss over the PKD appointment must be resolved through a solution. The government issued a government regulation regarding guidelines for determining PKD, taking into account the Constitutional Court decision no. 15/PUU-XX/2022, MK Decision No. 67/PUU-XIX/2021, Law Number 5 of 2014 concerning the State Civil Apparatus and of course regarding the stipulation of the old rules regarding the placement of regional heads which are no longer following the development of the situation and the simultaneous election regime. We know that previously there were demonstrations from several elements of society, such as a village head demonstration demanding a 9-year term of office, but will the later extension be effective? Is it true that the villages led by the village heads are progressing? What percent is successful? At least the damaged roads in the village have been repaired or the bureaucracy has eliminated brokers, you know how fast it is to take care of residents' administrative data? In addition, it is necessary to strictly regulate the regulation of the authority of the PKD, especially concerning strategic policies that have an impact on the regions, employee transfers, and actions that can be sued by the community. The PKD has been in effect for a long time, so it is necessary to regulate what powers it can exercise because if not, it has the potential to endanger the powers of the incumbent governor if his authority is used. infinite. The term of office of two to three years has the potential to

be abused, therefore the rules for implementing and supervising it must be strictly and regulated. There is a need for Government Regulation regarding Guidelines for Determining PKD, so it needs to be implemented immediately in connection with article 201 of Law Number 10 of 2016. To avoid the political tendency of certain individuals who have a strong interest in the 2024 Pilkada Elections, both presidential and regional head elections, in filling the head candidates area.

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