



Dismissal of Acting Provincial Heads in Indonesia Based on the Transparency Principle Perspective

Article	Abstract
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INTRODUCTION

Regional Head Elections (Pilkada) in Indonesia can be said to be one of the means of fulfilling the concept of democracy of a country which is an embodiment of the principle of popular sovereignty as formulated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which states that “*Kedaulatan berada di tangan rakyat dan dilaksanakan menurut Undang-Undang Dasar* (Sovereignty is vested in the people and exercised according to the Constitution)”.¹ Pilkada as a form of democracy does not only aim to replace the authoritarianism

¹ Eswati, “Penegakan Hukum Pemilu Legislatif 2019 pada Daerah Pemilihan (Dapil) Surabaya-4” (2021) 5:1 Lex J Kaji Huk dan Keadilan.

of the regional head election system, but holistically aims to achieve democratic values such as organizing free and periodic elections, accountable and open government and developing community participation in the sustainability of the country.²

Simultaneous elections, the legal consequence is that there will be several regions in Indonesia that experience a vacancy in the position of regional head because the term of office of the definitive regional head ends in 2022 and 2023. For example, in 2022, there will be 101 regions where the term of office of the definitive Governor, Regent and Mayor will end, followed by 171 regions in 2023. While in total there are 272 regions that will experience a vacancy in the position of regional head until the implementation of simultaneous regional head elections (Pilkada) in 2024.³ So that in a period of less than 4 months leading up to the 2024 simultaneous elections, the positions of definitive Governors, Regents and Mayors will be replaced by temporary officials in accordance with the provisions of 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 Lieu of Law Number 1 of 2014 concerning the Election of Governors Regents and Mayors into Law (Law No. 10 of 2016).⁴ The granting of attribution to the central government to appoint acting provincial heads from middle high-ranking positions and acting district / city heads from high-ranking positions until the inauguration of governors, regents, and mayors resulting from the 2024 simultaneous regional elections is regulated in Article 201 paragraph (9) of Law No. 10/2016 which reads:⁵

“Untuk mengisi kekosongan jabatan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, serta Wali kota dan Wakil Wali kota yang berakhir masa jabatannya tahun 2022 dan yang berakhir masa jabatannya pada tahun 2023, diangkat penjabat Gubernur, penjabat Bupati, dan penjabat Wali kota sampai dengan terpilihnya Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, serta Wali kota dan Wakil Wali kota melalui Pemilihan serentak nasional pada tahun 2024”.

(To fill the vacant positions of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor whose terms of office expire in 2022 and whose terms of office expire in 2023, acting Governors, acting Regents, and acting Mayors are appointed until the election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors through simultaneous national elections in 2024).

Kemudian, untuk kriteria penjabat gubernur diatur pada Pasal 201 ayat (10) yang berbunyi sebagai berikut:

“Untuk mengisi kekosongan jabatan Gubernur, diangkat penjabat gubernur yang berasal dari jabatan pimpinan tinggi madya sampai dengan pelantikan Gubernur sesuai dengan ketentuan peraturan perundang-undangan”.

(To fill the vacancy of the position of Governor, an acting governor is appointed from a middle high leadership position until the inauguration of the Governor in accordance with the provisions of laws and regulations).

² Suyatno Suyatno, “Pemilihan Kepala Daerah (Pilkada) dan Tantangan Demokrasi Lokal di Indonesia” (2016) 1:2 Polit Indones Indones Polit Sci Rev 212.

³ “pro-kontra-pj-kepala-daerah-ditunjuk-langsung-presiden-dan-menteri,” daring; www.cmmindonesia.com.

⁴ 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 J Jurisprud 106-119.

⁵ Republik Indonesia, “Undang-Undang Republik Indonesia 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 Menjadi U” (2016) 1-90.

Filling the position of regional head when a vacancy occurs is directly mandated by the constitution, because the position of regional head should not be left vacant. The mechanism for filling the position of regional head practiced by Indonesia, namely direct appointment by the President and the Minister of Home Affairs (Mendagri), has the potential to injure democratic values. This is because Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia regarding the election (filling) of regions is mandated to be carried out democratically. Democratic means that there must be popular involvement in the appointment.

The appointment of an Acting Regional Head will basically always be related to the dismissal of the Regional Head and Deputy Regional Head due to “permanent disability”. The dismissal of acting regional heads in Indonesia is a crucial issue that affects the stability of regional government and the implementation of democratic principles. Acting regional heads are temporary officials who fill the vacancy of the position of regional head until the election of a definitive regional head through general elections. The process of dismissing acting regional heads often generates controversy regarding transparency and public participation.⁶

The mechanism for dismissing acting regional heads, which is managed by the Ministry of Home Affairs (MoHA), is often criticized for being less transparent and centralized. One example is the dismissal of the acting head of NTB, Lalu Gita Ariadi. The Ministry of Home Affairs did not provide any information to the NTB Provincial Government regarding his dismissal. And another example of dismissal is the dismissal of Achmad Marzuki and the appointment of Bustami as PJ governor of Aceh. The decisions related to these dismissals are contained in the Presidential Decree and confirmed directly by the Minister of Home Affairs.

The problem of the dismissal of the Acting Regional Head arose due to the issue of the dismissal of the PJ governor of Aceh in the community due to indications of the defeat of one of the candidates in the area. In the legal context, the Constitutional Court (MK) through MK Decision 15/PUU-XX/2022 has emphasized the importance of clear and participatory regulations in the process of appointing and dismissing acting regional heads. The Court emphasized that every step in this process must be based on the principles of transparency, democracy and public participation. This research aims to examine the issue of dismissal of acting regional heads from the perspective of the principle of transparency, with the hope of providing deeper insight into the need for reform in the dismissal mechanism in order to maintain stability and democracy at the regional government level.

RESEARCH METHODS

This study is a normative research that uses qualitative methods and employs a case study approach. Qualitative research aims to gain a better understanding of phenomena, develop theories, and create a better picture of them. Data is obtained from literature studies, which include important ideas related to the issues discussed, and news in the media that are considered relevant.⁷ In this research, the author will search for and then review library materials in the form of laws and regulations, legal research results, books, papers and legal journals as well as the opinions of scholars.⁸

⁶ Tania Ananda Pratiwi, Ansorullah Ansorullah & Bustanuddin Bustanuddin, “Analisis Kewenangan Presiden Dalam Pemberhentian Kepala Daerah Menurut Undang-Undang Pemerintahan Daerah” (2023) 3:1 *Limbago J Const Law* 57-72.

⁷ Johan Nasution Bahder, *Metode Penelitian Hukum* (Bandung: Mandar Maju, 2008).

⁸ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 2015).

ANALYSIS AND DISCUSSION

Arrangements for the Dismissal of Acting Provincial Heads in Indonesia

National government, including local government, is governed by the 1945 Constitution of the Republic of Indonesia (UUD NRI). Article 18 of the 1945 Constitution divides regions into provinces, which are further divided into regencies and cities. Each region has its own government. In addition, the principles of autonomy and co-administration are also used to regulate regional governments. The government in the region, represented by the regional head and deputy regional head, is a representative of the central government in organizing the wheels of government in the region. In Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, it is explained that Governors, Regents, and Mayors, each as the head of the provincial, district and city regional governments are democratically elected.⁹

This year, simultaneous regional elections will be held. These simultaneous elections are faced with a number of important issues. One of the consequences of this is the vacancy for the position of regional head in several regions. Therefore, the government must appoint acting regional heads. An acting head is a person who is assigned as a regional head for a certain period of time.

Acting regional heads have an obligation to lead an area affected by the vacancy of the regional head position as a result of simultaneous election plans and Pilkada. In 2022, there were already 101 regions that were filled by acting regional heads. Furthermore, by the end of 2023 there are 171 regions that will appoint acting regional heads to fill vacant regional positions. Thus, the total number of acting regional heads that must be appointed by the government until the 2024 regional elections reaches 272. This figure is equivalent to half of the total number of provinces, regencies, and cities in Indonesia.¹⁰ However, the appointment of acting regional heads is also not always related to Pilkada. For example, the dismissal of regional heads and deputy regional heads due to permanent disability. Permanent disability means that the definitive official will not return to the position he left for various reasons. In the provisions of Article 86 Paragraph 5 of the Local Government Law, it regulates the replacement officials who will carry out the duties of regional heads and deputy heads who are dismissed due to permanent disability. The provisions referred to are If the regional head and / or deputy regional head is temporarily dismissed as referred to in Article 83 paragraph 1 of the Regional Government Law, the regional head and deputy regional head are dismissed because they are charged with a criminal offense punishable by imprisonment of at least 5 (five) years, criminal acts of corruption, criminal acts of terrorism, treason, criminal acts against state security, and other acts that can divide the Unitary State of the Republic of Indonesia, the Minister appoints an Acting Regent / Mayor at the proposal of the Governor as a representative of the Central Government until a court decision has obtained permanent legal force.

Law Number 8 of 2015 concerning the Election of Governors, Regents, and Mayors is a general regulation that is the basis for the implementation of Pilkada regulated in. Furthermore, Article 101 paragraph 9 of Law Number 10/2016 provides an explanation that in the event of a vacancy in the position of regional head and deputy regional head whose positions will expire in 2022 and 2023, acting governors, acting regents, and acting mayors will be appointed until the election of regional heads and deputy regional heads through national elections in 2024. Law Number 6 of 2020 concerning the Election of Governors, Regents, and Mayors also regulates temporary acting. Article 201 Paragraph (9) states that acting mayors, regents, and governors can be appointed until the regional head is validly elected through the 2024 simultaneous elections. Paragraphs (10) and (11) explain that in the event of a vacancy in the position of governor, the

⁹ UUD Negara RI Tahun 1945, 2000.

¹⁰ Furaihan Kamil Amazaye Amazaye, Ariq Nabil Sulaiman & Muh Imam Kastholani, "Efektivitas Pengangkatan Penjabat Kepala Daerah dalam Perspektif Demokrasi dan Teknokrasi" (2023) 17:01 J Publik 29-39.

acting governor who is appointed must come from a middle high leadership position until the inauguration period as an acting governor, while for a vacancy in the position of regent or mayor until the inauguration, the acting governor who is appointed must come from a Pratama high leadership position until the inauguration period as an acting governor.¹¹

Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors provides specific guidelines regarding the appointment, duties, powers and dismissal of acting regional heads. Article 8 of this Permendagri stipulates that the term of office of the Acting Governor is 1 (one) year and can be extended for another 1 (one) year with the same or different person.¹² The 1 (one) year term of office as referred to in paragraph (1) of article 8 may be excluded if following up on the results of the Minister's evaluation based on the performance of the Pj Governor; being named as a suspect in a criminal case; entering the retirement age limit; suffering from an illness that causes physical or mental dysfunction as evidenced by a certificate from an authorized doctor; resigning; unknown whereabouts as evidenced by a certificate from the police or an authorized official; and/or dying.¹³

The dismissal or extension of the term of office of the acting regional head is assessed from the results of reports and evaluations by the minister with reporting obligations at least once every 3 months. Furthermore, the results of the performance evaluation of the acting head will be submitted by the minister to the president.¹⁴

Implementation of Transparency Principles in the Dismissal of Acting Regional Heads

According to Henry B. Mayo, democracy is a system in which public policy is determined by a majority of effectively supervised representatives of the people in periodic elections based on the principle of political equality and held in an environment that guarantees political freedom.¹⁵ Phillippe C. Schmitter states that democracy is a system of government in which citizens are responsible for government actions in the public domain, acting indirectly and in collaboration with their elected representatives. The six basic principles of democracy, according to Hendry B. Mayo, are as follows: (1) voluntary and peaceful resolution of conflicts; (2) ensuring that societies change peacefully; (3) organizing a regular change of leaders; and (4) reducing the use of violence.¹⁶

Democracy is the application of the principle of freedom called majority rule, meaning that democracy is agreed upon by the majority and policies are made by the majority. Democracy and democratic elections are "*conditio sine qua non*" (*the one cannot exist without the others*).¹⁷ That is, elections are interpreted as a procedure to achieve a democracy or a means to transfer the sovereignty of the people to certain candidates to occupy political positions to represent the interests of the people and carry out government duties.¹⁸ Henk Addink¹⁹ states that there are three main foundations in a modern legal state, namely: the rule of law, democracy, and good governance. In running the government in the autonomous region, it cannot be separated from the

¹¹ Syarifuddin Usman, "Polemik Pengangkatan Penjabat Kepala Daerah" (2022) 2:1 J Sains, Sos Dan Hum 63-73.

¹² *Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 4 Tahun 2023 Tentang Penjabat Gubernur, Penjabat Bupati, Dan Penjabat Wali Kota*, Ber Negara Republik Indones 2023.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Abdul Wahid, Fathul Hamdani & Ana Fauzia, *Pengujian Undang-Undang: Mengurai Konsep Judicial Review & Judicial Preview* (Bandung: Alfabeta, 2024).

¹⁶ Meri Yarni et al, "Polemik Hukum Penunjukan Penjabat (PJ) Kepala Daerah Berdasarkan Undang Undang Nomor 10 Tahun 2016 Tentang Pemilihan Gubernur, Bupati dan Walikota" (2023) 7:2 Wajah Huk 483.

¹⁷ Fathul Hamdani & Ana Fauzia, "Legal Discourse: The Spirit of Democracy and Human Rights Post Simultaneous Regional Elections 2020 in the Covid-19 Pandemic Era" (2021) 5:1 Lex Sci Law Rev 97-118.

¹⁸ Rahmazani Rahmazani, "The Problems of Appointment Acting Officer of Regional Head in the Transition Period Before the Election of 2024" (2023) 20:2 J Konstitusi 196-215.

¹⁹ Henk Addink et al, *Sourcebook Human Rightt & Good Governance* (Utrecht: Universiteit Utrecht, 2010).

governance system, in the application of the governance system it must be based on the principles of good governance to ensure good governance.²⁰

Ridwan HR²¹ provides an explanation related to the general principles of good governance that an understanding of the general principles of good governance can not only be seen from a linguistic perspective but also from a historical perspective, because this principle arises based on history first. Leaning on these two concepts, the general principles of good governance can be understood as general principles that are used as the basis and procedures in the proper administration of government, which in this way the administration of government becomes better, polite, fair, honorable, free from injustice, violation of regulations, acts of abuse of authority, and arbitrary actions.

Transparency is one of the principles in achieving good governance. Transparency is a principle that guarantees access or freedom for everyone to obtain information about government administration, namely information about policies, the process of making and implementing them and the results achieved. This information is information about every aspect of government policy that can be accessed and reached by the public.

Ignoring the principle of transparency in the dismissal of acting regional heads in Indonesia can lead to a range of serious problems, which will undermine public trust, reduce accountability and open up opportunities for abuse of power. Without a transparent process, the reasons and process for dismissing an acting regional head are unclear. This will lead to decisions being made that tend to be subjective and not based on laws and regulations. An example is the dismissal of the acting head of Aceh, Achmad Marzuki and the appointment of Secretary Bustami as PJ governor of Aceh. The decision related to this dismissal is in line with Bustami's inauguration as stated in the Presidential Decree of the Republic of Indonesia No. 39/P of 2024 and confirmed directly by the Minister of Home Affairs. It is known that Marzuki was appointed as Governor of Aceh in July 2022. The position was again extended on July 6, 2023.

The replacement of the Governor took place amid the polemics over the ratification of the 2024 APBA, which until now there has been no meeting point between the Aceh government and the Aceh Parliament. The dismissal of the Acting Regional Head arose due to the issue of the dismissal of the PJ governor of Aceh in the community due to indications of the defeat of one of the candidates in the area. However, Tito Karnavian as the Minister of Home Affairs dismissed this issue and said that Achmad Marzuki was the longest serving Acting Governor because there had never been an Acting Governor who served as long as Marzuki.²² Another example of dismissal is the dismissal of the acting governor of West Nusa Tenggara, Lalu Gita. The Ministry of Home Affairs removed the duties and responsibilities of Lalu Gita Ariadi as the current acting governor of NTB.²³ This is stated in the letter number 100.2.1.3/2817/SJ, regarding the invitation to the inauguration signed by the Acting Secretary General of the Ministry of Home Affairs, Commissioner General Prof. Tomsu Tohir. During her tenure as acting governor of NTB, Gita has undergone a quarterly evaluation by the Ministry of Home Affairs twice since she was inaugurated. Gita's first quarterly evaluation took place in December 2023. Then, the second quarter evaluation in March 2024. Meanwhile, the third quarter evaluation has been scheduled to take place on June 26, 2024. However, the evaluation was canceled because Gita's position would

²⁰ Andi Safriani, "Telaah Terhadap Prinsip transparansi Dalam Pengelolaan Dana Desa," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 7, no. 1 (2020): 60, <https://doi.org/10.24252/jurisprudentie.v7i1.13924>.

²¹ Ridwan HR, *Hukum Administrasi Negara* (Jakarta: Raja Grafindo Persada, 2011).

²² Agus Setyadi, "achmad-marzuki-dicopot-dari-penjabat-gubernur-aceh," (2024), daring: www.kompas.id.

²³ Yuyun Kutari, "Evaluasi-Triwulan-Ketiga-Batal-Karena-Gita-Keburu-Diberhentikan-Dari-Pj Gubernur," lombokpost.jawapos.com, 2024, <https://lombokpost.jawapos.com/ntb/1504784565/evaluasi-triwulan-ketiga-batal-karena-gita-keburu-diberhentikan-dari-pj-gubernur>.

be replaced with a new figure. Even though the NTB Provincial Secretariat Government Bureau has prepared the files needed by Gita, to undergo the evaluation. Regarding this change, the Ministry of Home Affairs did not provide any information to the NTB Provincial Government because the replacement of pj is the right of the central government.

Public participation is reduced as a result of the usually technocratic dismissal of regional heads. Now, government technocrats, who are responsible for selecting acting candidates, have the authority to choose who will replace them and dismiss them. In addition, it is feared that the current closed appointment and dismissal of acting regional heads will provide an opening for certain parties to conduct political lobbying. As the country adheres to the Pancasila democratic system, the public should be given more space to participate in overseeing the dismissal and renewal of acting heads.²⁴ This provision does not require the participation of the local community to participate in the process of dismissing the acting regional head, so that the local community as the holder of regional sovereignty is neglected. In fact, the appointment of the acting head and the extension of the term of office of the acting head is a very important thing for the local community because this is related to the procession of determining the leader in the region and also has an impact on policies that will directly affect the local community.²⁵

To address issues such as these, it is important for the government to ensure that the process of dismissing acting regional heads is conducted transparently. A government that represents the interests and aspirations of the people will be more likely to produce policies that meet the needs of the community at large. As such, popular consent is important to ensure fair and inclusive representation in the decision-making process. Proposals for the appointment and dismissal of acting regional heads must consider the role of the Provincial DPRD as a form of community aspiration and involvement. In accordance with the principles of transparency and accountability, the process of appointing and dismissing acting regional heads should not be based on political decisions alone. Decisions made through a transparent and fair process are more likely to be accepted by the public. Without transparency, the procedural legitimacy of the dismissal of acting regional heads is questionable. In addition, the outcome of the decision must also be substantively acceptable. Without transparency, it is difficult to ensure that the dismissal of an acting regional head is done for truly legitimate and relevant reasons. Acting regional heads who are dismissed without adequate explanation can create instability and disrupt the running of regional governments. Therefore, reforms in the regulation and practice of dismissing acting regional heads are urgently needed to ensure that the process is fair, open and accountable.

CONCLUSION

The dismissal of acting regional heads in Indonesia is specifically regulated in the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors providing specific guidelines regarding the appointment, duties, authority and dismissal of acting regional heads. The dismissal of the acting regional head can be done because it follows up on the results of the minister's evaluation. The dismissal and appointment of acting regional heads in Indonesia, if done without the principle of transparency, can lead to various problems such as lack of accountability and decreased public trust. Improving transparency requires meaningful public participation. The involvement of the Provincial DPRD is also crucial as a form of representation of the people. The government needs to regulate specific and detailed provisions related to the dismissal of acting regional heads in Indonesia so that decisions related to this dismissal can be accepted substantively and are not merely political decisions. Therefore, the Government needs to develop more detailed regulations

²⁴ Amazaye, Ariq Nabil Sulaiman & Muh Imam Kastholani, *supra* note 10.

²⁵ Yarni et al., *supra* note 16.

regarding dismissal procedures, including performance evaluation criteria and reporting mechanisms. Secondly, the dismissal process must involve more parties, including DPRD and elements of society, to ensure that the decisions taken are truly representative and accountable.

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