Appointment Regional Head Appointment Regional Head During Transitional Government Period: A Responsive Legal Perspective

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Abstract

The regulation on regional heads in Indonesia, as stipulated in Article 18 of the 1945 Constitution of the Republic of Indonesia and the Regional Government Law, prioritizes the principles of democracy and regional autonomy, with an emphasis on direct elections by the people to ensure accountability and legitimacy. However, the appointment of acting regional heads (Pj) that does not involve direct community participation has raised criticism regarding transparency, legitimacy, and lack of public participation. This study aims to formulate regulations related to the appointment of acting regional heads during the transition period to realize responsive law. This study is a normative legal study that prioritizes conceptual and legislative approaches. The results of the study confirm that a responsive legal approach can be a solution, by emphasizing the importance of legal flexibility to respond to community needs, as well as increasing openness, participation, and accountability in the process of appointing Pj. The appointment of Pj by the President and the Minister of Home Affairs without community participation risks worsening the centralization of power, reducing the role of community participation, and damaging the essence of democracy. Therefore, more inclusive reforms are needed in this process to strengthen a government system that is more responsive to community aspirations. Therefore, revisions to the Regional Government Law and the Regional Election Law are very necessary to ensure a more transparent, accountable, and better community involvement in the appointment process for Acting Heads..

I. Introduction

Regional autonomy in Indonesia is an important concept within the framework of the Unitary State of the Republic of Indonesia (NKRI).(Suriadi et al., 2023) This concept is based on the principle of decentralization, which empowers local governments to regulate and manage government affairs in their respective regions. Regional autonomy is defined as the right, authority, and obligation of autonomous regions to independently regulate and manage government affairs and the interests of the local community, in accordance with applicable laws and regulations.(Nugroho et al., 2021) This is stipulated in Law No. 23 of 2014 on Regional Government (UU Pemda), which states that autonomous regions have specific territorial boundaries and are authorized to regulate government affairs based on community aspirations. The main principle of regional autonomy is to empower regions to make decisions aligned with local needs and potential, encompassing decentralization, community participation, and regional empowerment.(Adnyani et al., 2021) This emphasizes that regional autonomy within the framework of the Republic of Indonesia is an effort to create a government that is more responsive to the needs of local communities.(Danugroho & Yusfira, 2023) By granting greater authority to local regions, it is hoped that community well-being will improve and active participation in development will be encouraged.(Masitoh, 2024) However, the implementation of this autonomy must remain in line with the principles of a unitary state and applicable laws.

A crucial aspect of regional autonomy is the significant role of regional heads. Regional heads play a vital role in the implementation of regional autonomy in Indonesia, bearing full responsibility for the administration of their respective regions.(Affaruddin & Nadhifah, 2019) The regional head leads the implementation of government affairs that fall under the authority of the region, in accordance with the provisions of laws and policies established together with the Regional People's Representative Council (DPRD).(Prasetio, 2022) Regional heads manage regional budgets, including Local Original Revenue (PAD) and Balancing Funds from the National Budget (APBN). They are also responsible for drafting and submitting the Regional Revenue and Expenditure Budget (APBD) to the Regional People's Representative Council (DPRD) for deliberation. In exercising regional autonomy, regional heads must be able to mobilize community members for active participation in development and serve as creators and innovators in regional development.(Pratama & Pambudhi, 2021) Regional heads also have the responsibility to maintain public order and security in their areas, which is part of the general government duties.(Yuhandra et al., 2021) As representatives of the central government in the regions, regional heads serve as a bridge between the central government and local communities, ensuring that central government policies are effectively implemented at the regional level.(Suparman & Septiadi, 2021) In summary, regional heads play a crucial role in achieving the goals of regional autonomy: enhancing public welfare through the effective and efficient management of local resources.

The significance of this role highlights the critical need to avoid vacancies in provincial and regency leadership positions. Unfilled regional head positions represent a

serious issue in Indonesia, demanding immediate resolution to maintain governmental stability.(Widad, 2023) Several reasons explain why these vacancies cannot be tolerated. Unfilled regional head positions disrupt the smooth functioning of local government if not addressed promptly. According to Law Number 10 of 2016 concerning Regional Head Elections (UU Pilkada), in the event of a vacancy, the government must appoint an acting regional head to fill the position until a new regional head is elected. This acting official is responsible for ensuring the continuity of government operations and maintaining political stability in the region.(Anugrah, 2023) Vacant positions can lead to an accumulation of tasks and responsibilities for existing officials, potentially causing legal and administrative uncertainty in regional management. This can result in political and administrative upheaval that harms the public. Therefore, filling vacant regional head positions is crucial to ensuring the continuity of effective governance and public services.

The regulation of appointing acting regional heads in Indonesia is a complex issue requiring serious attention. The process of appointing acting regional heads is often considered opaque, as it only involves high-ranking central government officials such as the Minister of Home Affairs and the President, without direct participation from the public or regional representatives. This potentially leads to abuse of authority and reduced accountability. According to Article 201 of the Regional Head Election Law, acting regional heads are appointed to fill vacancies, but this mechanism does not reflect democratic principles. The closed process with minimal public participation can lead to the centralization of power and erode people's sovereignty. Therefore, this research aims to formulate regulations regarding the appointment of acting regional heads during transitional periods to create responsive law. Responsive law in filling regional head positions in Indonesia plays a vital role in creating effective and accountable governance. This research discusses two legal issues: (i) the problems of regulating the appointment of acting regional heads during transitional periods, viewed from the perspective of responsive law, and (ii) future regulations for appointing acting regional heads during transitional periods, viewed from the perspective of responsive law.

2. Research Method

This research, which focuses on the analysis of regulations related to the appointment of officials to regions during the transition period to realize responsive law, is a normative legal research.(Diantha, 2017) As a normative legal research, this study uses a framework of analysis based on legal theory, specifically responsive law theory as the main theoretical framework for analyzing legal materials in this research. The primary legal materials in this research include: the 1945 Constitution of the Republic of Indonesia, the Regional Government Law, and the Regional Head Election Law. Secondary legal materials are journal articles, books, and research results that discuss regulations related to the appointment of acting regional heads, regional autonomy, and responsive law theory. Non-legal materials include dictionaries. The analysis of legal materials is done prescriptively, where the analysis of legal materials with responsive law theory is adjusted to the existing legal issues and then efforts are made to formulate legal solutions in the

form of future regulations. The approach used is a conceptual and legislative approach.(Negara, 2023)

3. Results and Discussion

Problems of Arranging the Appointment of Acting Regional Heads in the Transitional Period Reviewed from a Responsive Legal Perspective

The regulations concerning regional heads are found in Article 18 of the 1945 Constitution of the Republic of Indonesia, which regulates regional government. Regional heads, consisting of Governors, Regents, and Mayors, serve as the leaders of the administration at each level of regional government (provincial, regency, and city).(Maranjaya, 2022) They are responsible for managing government affairs within the authority of the region and for policies determined jointly with the Regional People's Representative Council (DPRD). Article 18 paragraph (4) of the 1945 Constitution states that regional heads are democratically elected. This means that the election of regional heads must be carried out through a process that allows for direct public participation, which is an implementation of people's sovereignty.(Agusta, Ivan, 2023) The amendment to the 1945 Constitution in 2000 emphasized the importance of direct elections by the people to increase the legitimacy and accountability of regional heads.(Widodo et al., 2020)

The provision in Article 18 paragraph (4) forms the constitutional basis for filling the position of regional head. Regional heads have the authority to lead the implementation of regional government affairs, draft regional regulations (Perda), and submit draft budgets to the DPRD.(Hairun et al., 2023) Regional heads are also responsible for maintaining public order and implementing public policies that are in accordance with the needs of the community.(Tobing, 2021) The important function of regional heads is actually related to the principle of regional autonomy, where each region has the right to regulate and manage its own affairs within the framework of a unitary state.(Dinas Pemberdayaan Perempuan Perlindungan Anak dan Kependudukan Jawa Timur, 2024) This provides regional heads with the space to innovate and make decisions appropriate to local conditions. Overall, the provisions regarding regional heads in the 1945 Constitution reflect Indonesia's commitment to the principles of democracy and regional autonomy, as well as the importance of public participation in the governance process.(Utama, Andi Wahyu Putra, Mexsasai Indra, 2020)

Regional heads in Indonesia have the authority and functions regulated in the Regional Government Law. Regional heads have several main tasks, including:(Arhdan, Sandy Mulia, 2023):

a. Leading the implementation of government affairs within the region’s authority, in accordance with legislation and policies jointly determined with the DPRD (Regional People’s Representative Council).
b. Maintaining peace and order in their region.

c. Drafting and submitting draft regional regulations (Perda) concerning the Long-Term Regional Development Plan (RPJPD) and the Medium-Term Regional Development Plan (RPJMD) to the DPRD for deliberation.
d. Drafting and submitting draft Perda concerning the Regional Revenue and Expenditure Budget (APBD) and amendments to the APBD to the DPRD for deliberation.
e. Representing their region in and outside of court, and may appoint legal counsel to represent them in accordance with applicable regulations.
f. Proposing the appointment of a deputy regional head.
g. Carrying out other duties in accordance with applicable legislation.

Regional heads also have several important authorities, namely(Bahri, 2022):

a. Submitting draft Regional Regulations to the DPRD.
b. Establishing Regional Regulations that have been approved by the DPRD.
c. Establishing Regional Head Regulations (Perkada) and other regional head decisions.
d. Taking certain actions in urgent situations that are greatly needed by the region or community.
e. Exercising other authorities in accordance with the provisions of laws and regulations.

As described, regional heads and their deputies are directly elected by the people, reflecting the democratic principle in local governance and aligning with the important role of regional heads within the framework of regional autonomy.

The appointment of acting regional heads in Indonesia is governed by several laws, primarily the Regional Government Law and the Regional Head Election Law. Further regulations, such as the Minister of Home Affairs Regulation No. 4 of 2023, provide more detailed guidance on the process and mechanisms for appointing acting governors, regents, and mayors.(Agil Pamungkas & Wahyu Asmorojati, 2023) Despite existing regulations, the appointment process for acting regional heads is widely criticized for its lack of transparency. Many advocate for greater openness to allow for public understanding and oversight. Article 201 of the Regional Head Election Law stipulates that acting regional heads are appointed by the President and the Minister of Home Affairs, without local community participation. This raises serious concerns about the erosion of people's sovereignty and the dominance of the central government. The process is often viewed as undemocratic, lacking public legitimacy, effective DPRD oversight, and accountability to the community.(Pratama, Alfani Aldi, Nur, Insan Tajali, Erwinta, 2024) Overall, the problem of regulating the appointment of regional heads in Indonesia reflects a major challenge in maintaining the principles of democracy and community participation in the government process.(Harahap, 2024)

Regulations concerning the appointment of acting regional heads are relevant when viewed from the perspective of responsive law. A responsive law approach emphasizes the importance of the law adapting to and responding to societal needs and evolving social dynamics.(Asa et al., 2021) Responsive law promotes transparency in the appointment of acting regional heads. This includes transparency in candidate selection and the appointment process, involving public participation and legislative oversight.

Responsive law, a model developed by Philippe Nonet and Philip Selznick, emphasizes the importance of law as a response to social needs and public aspirations.(Maulana & Avrillina, 2024) Berikut adalah karakteristik utama dari hukum responsif, yaitu(Philippe Nonet, 2017):

a. Functional and Pragmatic, Responsive law emphasizes the pragmatic, purposeful, and rational function of law, meaning it must effectively meet societal needs.
b. Competence as Evaluation, Competence is the benchmark for evaluating legal implementation; success is measured by how well it achieves social goals and substantive justice.
c. Substantive Justice, Responsive law prioritizes substantive justice as the basis for its legitimacy; it must deliver fair outcomes, not just fair procedures.
d. Goal and Consequence Orientation Legal considerations focus on the goals and consequences for societal well-being, laws are tools to achieve larger social objectives.
e. Use of Discretion: Discretion in legal decision-making is encouraged, provided it remains oriented towards achieving the intended goals, allowing flexible application based on social context.
f. Cooperative Morality, Responsive law promotes cooperative morality as a guiding principle, fostering better relationships between law enforcement and the public.
g. Public Participation: It emphasizes public participation in lawmaking and implementation, allowing active involvement in policy determination.
h. Shift from Rules to Principles: It shifts from rigid rules to more flexible principles, enabling adaptation to social change.

This model aims to create a fairer, more socially relevant legal system that accommodates societal changes to achieve justice and public emancipation.(Damanik, 2023)

From a responsive legal perspective, the legitimacy of public officials must be based on public acceptance.(Antasari, 2019) Acting regional heads must not only meet legal and rational requirements but also possess charismatic legitimacy, reflecting public support and recognition. The law must be responsive to societal and political changes (Kurniawan, Samsithawrati, Disantara, et al., 2025). For example, in the context of postponed regional elections, responsive law would encourage the government to create more adaptable regulations that meet evolving societal needs, including more democratic mechanisms for filling vacancies.

A responsive law approach aligns with good governance principles, emphasizing transparency, accountability, and public participation in government (Kurniawan, Samsithawrati, Dharmawan, et al., 2025). This means that every policy or decision related to the appointment of acting regional heads must take into account the interests and aspirations of the community.(Saputra, M. Reza, 2024) Therefore, a responsive law perspective on appointing acting regional heads emphasizes adapting the law to societal needs while upholding democratic principles and government accountability. The challenges of appointing acting regional heads, from a responsive law perspective,

include issues related to public participation, transparency, and the legitimacy of the appointment process.

The Regional Head Election Law and the Regional Government Law grant the President and Minister of Home Affairs the prerogative to appoint acting regional heads without direct public participation.(Khusnul Khotimah et al., 2024) This leads to public dissatisfaction, as citizens feel excluded from decisions directly impacting their local government. The principles of transparency and accountability in responsive law demand that the appointment process be accessible and understandable to the public.(Anggreany Arief, 2021) In reality, however, the process is often opaque, lacking sufficient information on selection criteria and assessment results. This raises doubts about the legitimacy of appointed acting regional heads, as the public lacks the opportunity to evaluate or provide input on proposed candidates.

Appointing acting regional heads without an election can be seen as a form of political degradation in a democratic system. With long terms—around 2.5 to 3 years—before definitive elections, there are concerns that incumbents may not fully represent local interests. This potentially reduces public trust in the government and weakens political legitimacy at the regional level (Disantara et al., 2023). The main challenge within a responsive law framework is integrating public aspirations into the appointment mechanism. The current process is top-down, with decisions made by political elites without considering public input. To meet the principles of responsive law, reforms are needed to allow public participation, through consultation or more inclusive selection mechanisms. Overall, the challenges of appointing acting regional heads highlight the need for a thorough evaluation of existing legal mechanisms to create a governance system more responsive to public needs and aspirations.

The Future Arrangements for the Appointment of Acting Regional Heads in the Transition Period Reviewed from a Responsive Legal Perspective

The appointment of acting regional heads in Indonesia, from a responsive law perspective, raises several issues related to public participation, transparency, and the legitimacy of the appointment process. This appointment has a significant impact on the democratic system and local government.(Hananto Widodo, Dicky Eko Prasetio, Ridwan Arma Subagyo, 2024) The appointment of acting regional heads is done to address vacancies resulting from postponed elections. Based on the Regional Head Election Law, the President and Minister of Home Affairs have the prerogative to appoint acting governors and regents/mayors without involving local community participation. This raises questions about the legitimacy and representation of the people in filling these positions.(Anugrah, 2023)

The appointment of acting regional heads could lead to the centralization of power in the hands of the central government, which ignores the principle of popular sovereignty.(Sari et al., 2024) This potentially reduces public participation in the political process and provides justification for the elimination of direct regional elections. Research indicates that this mechanism can lead to a decline in the essence of democracy by

diminishing public involvement in choosing local leaders.(Gebrihet & Gebresillasie, 2024) There's an urgent need to improve transparency and accountability in the appointment process for acting regional heads. A more open and accountable process would help prevent nepotism and abuse of power, ensuring appointees meet clear criteria and align with public aspirations. Public involvement in performance audits of acting heads is also crucial for assessing leadership effectiveness.

Concerns exist that appointing acting regional heads without elections increases the risk of electoral fraud. Research shows that appointees often engage in election campaigning, potentially undermining democratic integrity.

In short, appointing acting regional heads is a complex issue requiring serious attention to uphold democratic principles and value public participation. Improving regulations based on responsive law is crucial to ensure transparency, accountability, and public participation. The government needs to immediately prepare technical regulations governing the appointment process, establishing clear parameters for proposed candidates and ensuring transparency in selection. The process must be more transparent, including disclosing candidates to the public and involving the public in the selection process, perhaps through public hearings allowing for feedback on proposed candidates.

Appointments should align with democratic principles, including involving the Regional People's Representative Council (DPRD) and community elements in the selection process to avoid power centralization and ensure strong public legitimacy. The Indonesian Ombudsman has identified potential maladministration regarding the appointment of active military/police personnel. Evaluating this policy is necessary to ensure appointments don't violate democratic principles or create conflicts of interest. The Ombudsman's recommendations should be seriously implemented by the Ministry of Home Affairs, including improving the appointment process and responding to public information requests promptly. These steps should make appointments more responsive, transparent, and accountable, supporting good governance and meeting public expectations.

In conclusion, future regulations regarding the appointment of acting regional heads, from a responsive law perspective, require revising the Regional Government Law and the Regional Head Election Law, along with their implementing regulations. The focus should be on ensuring transparency, accountability, public participation, and clear legal certainty in the appointment process.

4. Conclusion

Indonesian regulations on regional heads, as stipulated in Article 18 of the 1945 Constitution and the Regional Government Law, emphasize democracy and regional autonomy. Regional heads are directly elected by the people to ensure accountability and legitimacy. However, the appointment of acting regional heads without direct public participation has drawn criticism regarding transparency, legitimacy, and public participation. A responsive law approach, emphasizing legal flexibility to meet societal

needs, could provide a solution by increasing openness, participation, and accountability in the appointment process. More inclusive reforms are expected to strengthen a governance system more responsive to public aspirations.

The appointment of acting regional heads (Pj) In Indonesia faces various responsive law challenges, particularly concerning public participation, transparency, and legitimacy. Pjs are appointed to fill vacancies due to postponed elections. The President and Minister of Home Affairs have the prerogative to appoint without involving the local community, raising questions about public representation. Pj appointments risk centralizing power, reducing public participation, and undermining the essence of democracy. Improving transparency and accountability in the appointment process is crucial to prevent nepotism and abuse of power, ensuring appointees meet criteria aligned with public aspirations. Research suggests that appointing Pjs without elections can increase the potential for electoral fraud. Therefore, the appointment process should be more open, involve the public in selection, and follow democratic principles, including the roles of the DPRD (Regional People's Representative Council) and the community. Furthermore, the Indonesian Ombudsman found potential maladministration concerning appointments from active military/police personnel, requiring further evaluation. The government needs to improve these regulations by revising the Regional Government Law and the Regional Head Election Law to make the appointment process more responsive, transparent, accountable, and participatory.

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