

CHAPTER I

INTRODUCTION

A. Background of Research

General elections are a crucial component of Indonesia's democratic system, showcasing the country's commitment to democracy. Elections allow voters to participate directly in selecting their leader. This demonstrates Indonesia's status as a sovereign legal state whose sovereignty resides with the people. Article 1 paragraph (2) of the 1945 Constitution asserts that sovereignty belongs to the people and is carried out in accordance with the Constitution. Elections are seen as a method to establish democracy and transfer authority from the public to elected officials representing their interests and fulfilling governmental responsibilities.¹

Popular sovereignty is intricately linked to democracy and is inseparable from the rule of law. Laws that restrict and limit the state or government's power are based on the people's sovereignty. The relationship between the two is so interconnected that it is referred to as the democratic rule of law. Cited by Ni'matul Huda, she considers people's sovereignty to be a fundamental principle of the rule of law. In a democratic government system,

¹ Jimly Asshiddiqie, 2016, *Pengantar Ilmu Hukum Tata Negara*, (Jakarta: Raja Grafindo Persada), p. 414.

power-holders are accountable to the people, and authority is acquired through a free election system.²

The 2024 concurrent national general election is emerging as a focal point and is being extensively debated. In addition to the presidential and vice-presidential general elections, gubernatorial, regional, and mayoral elections will also occur concurrently in 2024. Regional elections in 2022 and 2023 are prohibited according to Article 201 paragraph (8) of Law Number 10 of 2016. This law states that the election of governors, deputy governors, regents, deputy regents, mayors, and deputy mayors throughout Indonesia will occur simultaneously in 2024.

The delay of the regional elections in 2022 and 2023 led to a prolonged transition period, resulting in vacancies in regional leadership positions across autonomous regions for approximately 2 to 3 years until the 2024 simultaneous regional elections occurred. 271 regional chiefs, including 24 Governors, 191 Regents, and 56 mayors, whose terms have expired, will not hold regional elections in 2022 and 2023. Maintaining the proper functioning of leadership is crucial to prevent any hindrance to government management. In the Indonesian constitutional system, the office of the regional head is temporarily filled by an official known as the "acting regional head." Law 10/2016, Article 201,

² Ni'matul Huda, 2005, *Negara Hukum, Demokrasi dan Judicial Review* (Yogyakarta: UII Press), p. 19.

paragraph 9 states that: *"To fill the vacancies in the positions of Governor and Deputy Governor, Regent and Deputy Regent, Mayor and Deputy Mayor whose term of office ends in 2022 as intended in paragraph (3) and whose term of office ends in 2023 as intended in paragraph (5), appointed "Acting Governor, Acting Regent, and Acting Mayor until the election of the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor through simultaneous national elections in 2024."*

Law Number 10 of 2016 is the main basis used by the government as a reference in appointing acting regional heads in the transition period before the simultaneous regional elections in 2024 in addition to several other regulations which also contain regulations regarding acting regional heads, such as Minister of Home Affairs Regulation Number 74 of 2016 on Leave in Outside State Dependencies for Governors, Regents and Mayors (Home Affairs Regulation Number 74/2016) in conjunction with Minister of Home Affairs Regulation Number 1 of 2018 concerning Amendments to Minister of Home Affairs Regulation Number 74 of 2016 on Leave outside State Dependencies for Governors, Regents and Mayors (Home Affairs Regulation Number 1 /2018), Law Number 23 of 2014 on Regional Government, Government Regulation Number 6 of 2005 on Election, Validation of Appointment and Dismissal of Regional Heads and Deputy Regional Heads, and Government Regulation

Number 49 of 2008 on the third amendment to Government Regulation Number 6 of 2005.

Law 10/2016 briefly outlines the qualifications for appointed officials but does not provide details on the method for appointing officials. Various issues arose when trying to appoint an acting regional leader during the transition period before the regional elections in 2024. The initial issue concerned appointment methods that need to adhere to appropriate regulations. The lack of a comprehensive reference regulating the system for appointing officials has led to the process being conducted privately with limited involvement. The closed procedure is evident due to the lack of notification regarding the suggested regional head candidates list. New candidates for office are revealed to the public upon their appointment or inauguration.³

Insufficient regulations and restricted authority for an official might lead to issues. Acting regional heads have distinct authority compared to definitive regional chiefs chosen through direct election by the populace. Article 34 paragraph (2) of Government Administration Law Number 30/ 2014 on regulates the limitations on authority for an official, stating that “*daily executors or task executors must adhere to statutory regulations when carrying*

³ Erik Purnama Putra, 2022, *Perludem Soroti Penunjukan Penjabat Gubernur Yang Tertutup*. <https://rejabar.co.id/berita/rbr3ag484/perludem-soroti-penunjukan-penjabat-gubernur-yang-tertutup> (Accessed on February 29th, 2024 at 02.32 P.M)

out tasks, making decisions, and performing routine actions within their position's authority.” Article 14, paragraph (7) states that “government entities and officials with authority from mandates cannot make strategic decisions affecting legal status, organizational structure, personnel, or budget allocation.”⁴

Regulations concerning the authority of acting regional leaders lack specificity in obligations, legal protection, sanctions, and other aspects essential for governing a territory. Regulations focus on prohibitions that the official cannot perform when acting as a substitute official. Head of the district. Current regulations do not specifically address the duties and authority of an acting regional head during a transition period before regional elections. This restriction of authority will greatly affect the optimization of regional government management as long as the acting regional head is in charge.⁵

Earlier, a discussion was held regarding topics relevant to the focus of this research. The study in question is research completed by Sutan Rais Aminullah Nasution (2020) titled "Authority of Acting Regional Heads in Regional Government According to the Perspective of State Administrative Law." The research results revealed that the authority of acting regional heads

⁴ Indonesia "Law No. 30 of 2014 on Government Administration", See Explanation of Article 14 paragraph (7).

⁵ Akmal Malik, et al., "Direct and Simultaneous Regional Head Election in Indonesia with Government Efforts to Build a Balance of Political and Managerial Approaches." *East Asia*, Vol. 37. No. 2 (June, 2020), p. 261-279.

is not explicitly defined, but it may be found in many statutory provisions that outline the limitations and scope of their jurisdiction. Acting regional heads have limited authority and cannot make decisions on organizational, personnel, budget distribution, and strategic plans without approval from the Minister of Home Affairs.⁶

Nandang Alamsyah Deliarnoor (2015) conducted a study named "Problematics of Executing Tasks (Plt) in the Pre- and Post-Simultaneous Regional Election Transition Period." The research results revealed that during the previous simultaneous regional election period, there were several issues concerning the selection of Acting regional leaders, specifically due to the absence of clear regulations guiding their appointment.⁷ The study focuses on the constraints on the authority of an interim leader and the legislative safeguards in place to defend it.

B. Problem Formulation

Based on the description of the background of the problem above, the background of the problem in this research can be formulated, namely:

⁶ Sutan Rais Aminullah Nasution and Amsyali Syahputra Sembiring. "Kewenangan Pelaksana Tugas (Plt) Kepala Daerah Dalam Pemerintahan Daerah Menurut Perspektif Hukum Administrasi Negara". *Mahadi: Indonesia Journal of Law*, Vol 1, No. 1 (February, 2022), p. 140-153.

⁷ Nandang Alamsyah Deliarnoor. "Problematika Pelaksana Tugas (Plt) dalam Masa Transisi Pemerintahan (Pra dan Pasca Pilkada Serentak)". *CosmoGov: Jurnal Ilmu Pemerintahan*, Vol 1, No. 2 (Oktober, 2015), p. 322.

1. How are the requirements and mechanisms for filling the position of Acting Governor and their authority during the transition period for the 2024 regional head election?
2. How are the Appointment of Acting Regional Heads in Assessment of the Decision of the Constitutional Court of the Republic of Indonesia?

C. Objectives of Research

Based on the problem formulation described above, the research objectives to be achieved in this study are:

1. To understand the requirements, procedures or mechanisms for filling the position of Acting Governor and their authority during the transition period for the 2024 regional head election.
2. To Analyze the Appointment of Acting Regional Heads in Review of the Decision of the Constitutional Court of the Republic of Indonesia.

D. Benefits of Research

Based on the explanation of the problem background, problem formulation and research objectives above, the results of this research are expected to provide theoretical and practical benefits. The benefits from this research include:

1. Theoretical Aspect

To provide an accurate analysis of the requirements, procedures, and mechanisms for filling the position of Acting Governor and the appointment

of Acting Regional Heads during the transition period for the simultaneous national regional elections in 2024. This research aims to contribute to the development of legal science, particularly in the field of constitutional law, by offering insights and detailed examinations that can enhance the understanding and framework of appointing Acting Governors and Regional Heads in the context of the 2024 elections.

2. Practical benefits

To serve as a recommendation for improvement regarding the appointment of interim regional heads during the transition period for the simultaneous national regional elections in 2024. This formulation focuses on providing recommendations for improving the process, aligning with your intention to offer constructive solutions.