

Appointment of Members of the Indonesian National Army as Acting Regional Heads in the Face of Simultaneous Regional Elections in 2024



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ABSTRACT: The simultaneous Regional Head Elections in 2024 result in vacancies in the positions of Governor, Regent and Mayor who expire their terms because they have to wait for definitive officials from the results of the 2024 Regional Head Elections. This study aims to analyze the arrangement for the appointment of members of the Indonesian National Army as Acting Regional Heads and analyze the limits of authority possessed by Acting Regional Heads in implementing regional government. The type of research used is juridical-normative with a statutory approach, The results of the research are, *first*, the appointment of members of the Indonesian National Army as Acting Regional Heads is contrary to the provisions of Article 201 Paragraph (11) of Law Number 10 of 2016 concerning Regional Head Elections, and Article 19 Paragraph (1) of Law Number 5 of 2014 concerning State Civil Apparatus, besides that there are also other conflicts in Article 47 Paragraph (1) of Law Number 34 of 2004 concerning the Indonesian National Army. *Second*, the authority of the Acting Regional Head is limited by four things, namely prohibiting employee mutations, canceling licenses that have been issued by previous officials and/or issuing licenses that are contrary to those issued by previous officials, making policies on regional expansion that conflict with the policies of previous officials, and making policies that are contrary to government administration policies and official development programs previously. The limitation of such authority may be waived with the written approval of the Minister of Home Affairs. However, the provisions for obtaining written approval from the Minister of Home Affairs are not regulated in the applicable laws and regulations.

KEYWORDS: Acting Regional Head; Indonesian National Army; Authority

I. INTRODUCTION

The constitution is the basic law that serves as a guideline in the administration of a country. A constitution can be in the form of a written rule (Basic Law), or it can be an unwritten rule. In structuring or drafting a written constitution, the basic values and norms that live in a country also flow the formulation of a norm into the text of the Basic Law.¹ Indonesia as an independent country has made the 1945 Constitution as the basic constitution in the administration of a country's government system.

The existence of regional government in accordance with what is affirmed in the Constitution has given birth to laws and regulations governing regional government, namely Law Number 9 of 2015 Second Amendment to Law Number 23 of 2014 concerning Regional Government. For this reason, in terms of carrying out local government affairs, based on Article 59 Paragraph (1) and Paragraph (2) of Law Number 23 of 2014 concerning Regional Government, states that: (1) *'Each region is led by the head of the Regional Government called the regional head.'* (2) *"The head of the region referred to in paragraph (1) for the Provincial Region is called the Governor, for the Regency Area is called the Regent, and for the City Area is called the Mayor."*

The birth of the Law as a basis that controls a composition of local government administration, among others, functions, positions, hierarchies, requirements and competencies of regional heads carried out with the principle of regional autonomy as stipulated in the Regional Government Law which means the rights, authorities, and obligations of autonomous regions to regulate and manage their own government affairs and the interests of local communities, in accordance with regulations applicable legislation. One of the important things now is the simultaneous Regional Head General Election in 2024, this is the mandate of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors, in Article 201 Paragraph (8) it mentions national simultaneous voting in regional head elections throughout the territory of the Unitary State of the Republic of Indonesia in 2024.

¹ Jimly Asshiddiqie, 2011, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta, Hlm. 29.

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Regional Head Elections will be held simultaneously, looking at Article 201 paragraph (9) of Law Number 10 of 2016, ensuring that in 2022, there are 101 Regional Heads and Deputy Regional Heads who will end their term of office, namely; Governors of 7 Provinces, Regents of 76 Districts, and Mayors of 18 Cities. While in 2023 there will be 170 Regional Heads, thus in the next two years there will be 271 Governors, Regents and Mayors along with their Deputies who will quit and therefore the Government must prepare the process of appointing Acting Regional Heads (Governors, Regents and Mayors).²

The government through the Minister of Home Affairs has appointed Acting Regional Heads at the provincial, regency and city levels whose term of office has been completed and there will be more elections in the 2024 regional elections. The Acting Regional Head elected by the President is the Governor and the Acting Head elected by the Minister of Home Affairs is the Regent and Mayor in carrying out the duties, authorities, and obligations of the Regional Head until the inauguration of the definitive regional head elected through the National Election, the term of office of the acting regional head is 1 year and can be extended for another 1 year with the same or different people.

The problem that arises is actually the status of TNI Brigadier General Andi Chandra who is still an active member of the TNI, except that Andi Chandra is no longer active as a TNI soldier (retired) or dismissed from TNI membership duties. This status as an active TNI member will regenerate the idea of Dwifungsi Abri which has long been buried, active TNI members are indeed not allowed to be involved in direct political activities, as it is known that the position of Regional Head is a civilian position that will directly intersect with politics.

The appointment of TNI Brigadier General Andi Chandra as Acting Regent violates the provisions of laws and regulations, namely: Law Number 34 of 2004 concerning the Indonesian National Army, Law Number 10 of 2016 concerning Regional Head Elections, Law Number 5 of 2014 concerning State Civil Apparatus, concerning provisions for filling vacancies of Acting Regional Heads ahead of simultaneous elections in 2024.

The action of the Minister of Home Affairs against the appointment of TNI Brigadier General Andi Chandra who is an active member of the TNI as the Acting Regent of West Seram, Maluku. indicates that in the process of appointing the Acting Regional Head violates the provisions of the applicable law, such actions are related to deviations in procedures and neglect of legal obligations. Acting regional head is the position of State Civil Apparatus which is a civil domain and is obtained from the results of an administrative process, in contrast to the definitive regional head,³ which is obtained through political results, namely the Regional Head Election, therefore the appointment of active members of the Indonesian National Army as Acting Regional Heads indicates the Decision of the Minister of Home Affairs in the appointment of the Acting Regional Head in this case the Regent of West Seram, Maluku Province violates applicable laws and regulations and shows the unprofessionalism of the Indonesian National Army as a means of state defense and security as referred to in the TNI Law.

The unclarity of authority and authority possessed by the Acting Regional Head raises questions until now there has been no arrangement that clearly regulates the limits of authority and authority possessed by the acting regional head. According to Philipus M Hadjon, authority consists of three components, namely influence, legal basis and legal conformity. The influence component is that the use of authority is intended to control the behavior of the subject of law. The basic legal component, that the authority must always be designable for its legal basis and the legal conformity component implies the existence of general standards (all types of authority) and special standards (for certain types of authority)⁴

Based on the description of the problem above, this paper will analyze about: *first*, What is the legal regulation for the appointment of members of the Indonesian National Army to active status as acting regional heads (Bupati)? *Second*, What is the limit of the authority of the acting regional head in implementing regional government?

II. RESEARCH METHODS

The type of research used is the normative research type. This type of normative legal research is also commonly referred to as doctrinaire legal research, because this research is only aimed at written regulations, so this research is closely related to *library research*.⁵ The type of data used in this study is secondary data consisting of primary, secondary and tertiary legal materials.

² <https://www.kompas.id/baca/opini/2022/01/15/problematika-pilkada-pada-november-2024> dilihat pada 17 Mei 2024

³ Mario Ferdinandus Manengkey, "Kewenangan Pejabat Sementara (Pjs) Gubernur Dalam Menetapkan Keputusan Tata Usaha Negara", Lex Administratum, Vol. III No. 6, Agustus, (2015)

⁴ Philipus M Hadjin, 2012, *Hukum Administrasi dan Korupsi*, UGM Press, Yogyakarta, Hlm. 11

⁵ Irwansyah, 2020, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel Edisi Revisi*, Mira Buana Media, Yogyakarta, Hlm. 98.

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III. RESULTS AND DISCUSSION

A. Legal Regulation on the Appointment of Members of the Indonesian National Armed Forces as Acting Regional Heads (Regent)

General Elections for Regional Heads and Deputy Regional Heads, or often called Pilkada are part of the implementation of democracy in the regions which is a consequence of the enactment of the concept of regional autonomy in Indonesia, Regional Heads are public offices and political positions that are tasked with leading and moving the pace of government in the regions, the meaning of public office means that regional heads carry out decision-making and policy functions by taking into account the interests of the people and have an impact directly to the people, therefore, regional heads must be elected by the people and are obliged to account for them, while the meaning of political office is that the recruitment mechanism for regional heads is carried out politically through general elections directly elected by the people and involves elements of interested political elements.

Article 18 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "The Unitary State of the Republic of Indonesia is divided into provincial areas. The province is further divided into districts and cities. Each province, regency and city has an autonomous regional government by considering regional origins, therefore in an administration of regional government is a constitutional requirement that must be implemented.

Article 59 Paragraph (1) of Law Number 23 of 2014 concerning Regional Government, states that: "each region is led by a regional head of government called a Regional Head." then in Paragraph (2) states that "the regional head for the province is called the Governor, for the regency area is called the Regent and for the city area is called the Mayor." meaning that the local government that leads a regency is called the Regent.

The appointment of TNI Brigadier General Andi Chandra Asa'duddin as the Acting Regent of West Seram of Maluku Province based on the Decree of the Minister of Home Affairs Number: 113.81-1164 of 2022. In terms of the appointment of active TNI Soldiers as the Acting Regent of West Seram, the Special Staff of the Minister of Home Affairs, Kastorius Sinaga, said: "*Based on the factual data we collected, West Seram Regency has the potential for horizontal conflicts due to territorial boundaries, conflicts have occurred since 2021 until this year in the nine districts, in terms of track record, competence, and capacity, TNI Brigadier General Andi Chandra Asa'duddin is considered capable of detecting, handling and reducing such conflicts, he is the right man on the right time as the Acting Regent of West Seram*".⁶

This violates the applicable regulations in Indonesia, namely the Elections Law, the State Civil Apparatus Law, and the Indonesian National Army Law, the occurrence of maladministration in the appointment of Acting Regional Heads which signals a neglect of legal obligations, the appointment of active TNI Soldiers as the Acting Regent of West Seram Maluku which clashes with the idea of reforming the country's security and defense sector and which is the basis for principles professionalism in carrying out their roles, duties, and functions as soldiers of the Indonesian National Army and the foundation in the management of regional administration as referred to in applicable laws and regulations.

In Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors, the provisions for filling the Acting Regional Head are described in the following provisions:

1. **Article 54D Paragraph (4)** "In the event that no pair of candidates has been elected against the results of the election of 1 (one) pair of candidates, the government assigns the acting Governor, acting Regent, or acting Mayor."
2. **Article 174 Paragraph (7)** "In the event that the Governor and Deputy Governor, Regent and Vice Regent, and Mayor and Deputy Mayor are jointly unable to perform their duties because: a. passed away; b. own request; or c. dismissed; while the remaining term of office is less than 18 (eighteen) months, the President establishes the acting Governor and the Minister establishes the Acting Regent/Mayor."
3. **Article 201 Paragraph (9)** "To fill vacancies in the offices of Governor and Deputy Governor, Regent and Vice Regent, and Mayor and Deputy Mayor whose term ends in 2022 as referred to in paragraph (3) and whose term ends in 2023 as referred to in paragraph (5), the Acting Governor, Acting Regent, and Acting Mayor are appointed until the election of the Governor and Deputy Governor, Regents and Vice Regents, as well as Mayors and Vice Mayors through national simultaneous elections in 2024."
4. **Article 201 Paragraph (10)** "To fill the vacancy in the office of Governor, an acting Governor shall be appointed from the position of intermediate high leader until the appointment of the Governor in accordance with the provisions of laws and regulations."
5. **Article 201 Paragraph (11)** "To fill the vacancy in the office of Regent/Mayor, an Acting Regent/Mayor shall be appointed from the position of primary high leader until the inauguration of the Regent, and the Mayor in accordance with the provisions of laws and regulations".

⁶<https://nasional.tempco.co/read/1596741/soal-keamanan-jadi-alasan-mendagri-pilih-brigjen-tni-andi-chandra-jadi-pj-bupati> dilihat pada 19 Mei 2024

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6. **Explanation of Article 201 Paragraph (9)** "The Acting Governor, acting Regent, and Acting Mayor have a term of office of 1 (one) year and can be extended by the following 1 (one) year with the same or different persons".

Thus, for the district or municipality level in filling the vacancy in the position of regional head due to the expiration of his term of office and having to wait until the inauguration of the definitive regent from the results of the 2024 regional election, an acting regent is appointed and inaugurated from the position of primary high leader. The position of Primary High Leader is a high position in local government equivalent to echelon II, hereinafter what is meant by the position of primary high leader includes director, bureau head, deputy assistant, directorate general secretary, inspectorate general secretary, agency head secretariat, central head, inspector, head of the big hall, assistant provincial regional secretariat, district / city regional secretary, head of service / head of provincial agency, secretary of the Regional People's Representative Council, and other equivalent positions".⁷ and "what is meant by the position of primary high leader is the regional secretary of the district/city, the head of the provincial office, and the head of the district/city office".⁸

In line with the appointment of acting regents from among active soldiers of the Indonesian National Army, the author argues that because as active members of the TNI, the provisions of the Indonesian National Army Law No. 34 of 2004 still apply to the appointment of TNI members as acting regents. Looking at the prevailing laws and regulations in Indonesia, the Indonesian National Armed Forces Law is a specific rule that applies to members of the TNI, especially in the appointment as acting regent who is the head of government in the region, the applicable regulations related to the appointment of acting regents must not release the applicable regulations in Law No. 34/2004 concerning the Indonesian National Army for TNI members.

In the Indonesian National Armed Forces Law, it is very clear that TNI members will fill civilian positions outside the TNI agency, Article 47 Paragraph (1) of Law No. 34 of 2004 concerning the Indonesian National Armed Forces, stipulates that: "Soldiers can only occupy civilian positions after resigning or retiring from active service." Furthermore, Article 47 Paragraph (2) of Law No. 34/2004 of the Indonesian National Army, states: "Active soldiers may hold positions in offices in charge of coordinating the affairs of State Politics and Security, State Defense, Presidential Military Secretary, State Intelligence, State Cipher, National Defense Institute, National Defense Council, National Search and Rescue (SAR), National Narcotics, and Supreme Court."

Meanwhile, what is meant by position is a position that can be occupied by active soldiers, excluding the position of Minister of Defense or other political positions.⁹ In line with this, Article 39 of the TNI Law regulates the prohibition of TNI soldiers, namely: a.) Activities of being a member of a political party; b.) Practical political activities; c.) Business activities; and d.) Activities for election to the legislature and elections and other political offices. The existence of this provision as long as members of the Indonesian National Army have active status, members of the Indonesian National Army are prohibited from occupying positions that are in direct contact with politics, while the position of acting regent is a political position and will deal directly with politicians whose filling is decided by the government directly elected by the people.

Furthermore, "Active TNI members are honorably discharged from their military service for occupying positions that according to laws and regulations cannot be occupied by an active soldier." these provisions are normed in Article 55 Paragraph (1) point g. As it has been explained that the legitimacy of the existence of the Indonesian National Army has been regulated in Law No. 34/2004 concerning the Indonesian National Army, this is a manifestation of Article 30 of the Constitution of the Republic of Indonesia concerning State Defense and Security, in line with the transfer of status which is a transfer from one position to another based on certain requirements, this can then be seen from several fillings of the position of Apparatus State Civil by Indonesian National Army soldiers active status based on Law Number 34 of 2004 concerning the Indonesian National Army, Law Number 5 of 2014 concerning State Civil Apparatus, and Government Regulation Number 17 of 2017 concerning Civil Servant Management.

Existence related to the filling of civilian positions by active TNI soldiers and the transfer of status of legitimate positions with the formulation of Article 20 Paragraphs (2) and (3) of Law No. 5 of 2014 concerning the State Civil Apparatus, states that: (2) "The filling of certain ASN positions can be filled from TNI soldiers and Members of the National Police of the Republic of Indonesia". (3) "The filling of certain ASN positions originating from soldiers of the Indonesian National Army and members of the National Police of the Republic of Indonesia as referred to in paragraph (2) shall be carried out at central agencies as stipulated in the Law on the Indonesian National Army and the Law on the National Police of the Republic of Indonesia".

The filling of civilian positions by active TNI soldiers into civil servants is explained in Article 147 of Government Regulation Number 11 of 2017 concerning Civil Servant Management, explaining that: "Certain ASN positions within certain Central Agencies can be filled by soldiers of the Indonesian National Army and members of the National Police of the Republic of Indonesia in accordance with competence based on the provisions of laws and regulations." Meanwhile, Article 148 states that: (1) *Certain ASN positions can be filled from soldiers of the Indonesian National Army and members of the National Police of the Republic of*

⁷ Penjelasan Pasal 19 ayat (1) huruf c Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara

⁸ Penjelasan Pasal 115 ayat (1) Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara

⁹ Penjelasan Pasal 47 Ayat (2) Undang-Undang Nomor 34 Tahun 2004 tentang Tentara Nasional Indonesia

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Indonesia. (2) "Certain ASN positions as referred to in paragraph (1) are in central agencies and in accordance with the Law on the Indonesian National Army and the Law on the National Police of the Republic of Indonesia".

This means that certain State Civil Apparatus positions can be carried out by active TNI soldiers, allowing active TNI Soldiers to fill civilian positions in Central Government Agencies instead of Local Government Agencies without having to be transferred their status as Civil Servants as mentioned in Article 7 Paragraph (2) of the Indonesian National Army Law, which states that: "Active duty soldiers can hold positions in offices in charge of the Coordinator for State Politics and Security, State Defense, Military Secretary to the President, State Intelligence, State Cipher, National Defense Institute, National Defense Council, National Search and Rescue (SAR), National Narcotics and Supreme Court." and does not include positions in regional agencies and Acting Regional Heads.

The transition of active TNI soldier status to civil servant is clearly stated in Article 150 of Government Regulation No. 11 of 2017 on Civil Servant Management, stating: "Soldiers of the Indonesian National Army and members of the Indonesian National Police who occupy ASN positions in central agencies as referred to in Article 148 cannot change status to civil servants."

Artinya Anggota Tentara Nasional Indonesia yang menempati jabatan Aparatur Sipil Negara dalam pemerintahan pusat tidak can be transferred status to civil servants, this is clear, according to the author, closing the opportunity to change the status of TNI soldiers to civil servants and getting smaller. "Soldiers of the Indonesian National Army and members of the National Police of the Republic of Indonesia may fill High Leadership Positions (JPT) in government agencies other than certain central agencies as referred to in article 148 after resigning from active service if needed and in accordance with competencies determined through an open and competitive process." This is clearly stated in Article 57 of Government Regulation Number 11 of 2017 concerning Civil Servant Management.

Looking at the legal arrangements governing the transfer of the status of the State Civil Apparatus, the chances of active Indonesian National Army soldiers who will occupy civilian positions are getting smaller and closer, because there are age limits, linear duty experience with the position to be occupied, the transition to Civil Servants requires that they must leave the military service and then follow the selection for the High Leadership Position (JPT) competitively and openly in accordance with the arrangements that regulate in this case the laws and regulations, if it fails the relevant TNI member cannot return to active in the army service because he has resigned from active military service, because the main function of the Indonesian National Army is to maintain the security and stability of the country.

From the explanation above, the classification of Indonesian National Army Soldiers to fill positions outside the TNI agency or civilian positions can be illustrated in the following table:

No.	MEMBERS OF THE INDONESIAN NATIONAL ARMED FORCES
1	To be able to hold civilian positions must resign or retire from active service; (Article 47 Paragraph (1) of Law Number 34 of 2004 concerning the Indonesian National Army)
2	Untuk menduduki jabatan pada kantor yang membidangi koordinator bidang Politik dan Keamanan Negara, Pertahanan Negara, Sekretaris Militer Presiden, Intelegen Negara, Lembaga Ketahanan Nasional, Dewan Pertahanan Nasional, Search and Rescue (SAR) Nasional, Narkotika Nasional, dan Mahkamah Agung tidak harus mengundurkan diri atau pensiun dari dinas aktif keprajuritan; (Article 47 Paragraph (2) of Law Number 34 of 2004 concerning the Indonesian National Army)
3	To occupy the post of Minister of Defense or other political office cannot be occupied by active soldiers. In other words, must resign or retire from active service; (Article 47 Paragraph (2) of Law Number 34 of 2004 concerning the Indonesian National Army)
4	To become a civil servant, one must first be honorably discharged from service; (Article 55 Paragraph (1) letter f of Law Number 34 of 2004 concerning the Indonesian National Army)
5	To occupy a position that, according to the laws and regulations, cannot be occupied by an active soldier, must be honorably discharged from military service; (Article 55 Paragraph (1) letter g of Law Number 34 of 2004 concerning the Indonesian National Army)
6	Certain ASN positions within certain Central Agencies can be filled by soldiers of the Indonesian National Army and members of the State Police of the Republic of Indonesia in accordance with competence based on the provisions of laws and regulations

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No.	MEMBERS OF THE INDONESIAN NATIONAL ARMED FORCES
	(Article 147 of Government Regulation Number 11 of 2017 concerning Civil Servant Management)
7	Soldiers of the Indonesian National Army and members of the National Police of the Republic of Indonesia who occupy the position of ASN in central agencies as referred to in Article 148 cannot change status to civil servants (Article 150 of Government Regulation Number 11 of 2017 concerning Civil Servant Management)
8	Soldiers of the Indonesian National Army and members of the National Police of the Republic of Indonesia can fill JPT in government agencies other than certain central agencies after resigning from active service if needed and in accordance with the competencies determined through an open and competitive process (Article 157 Paragraph (1) of Government Regulation Number 11 of 2017 concerning Civil Servant Management)

As explained by the author, members of the TNI while still active as members of the TNI, in this case Brigadier General Andi Chandra Asa'duddin who was appointed by the Minister of Home Affairs as the Acting Regent of West Seram through Decree Number; 113.81-1164 of 2022, Maluku Province should therefore comply with and be bound by the TNI Law which is a special law (*Lex Specialis*) from the provisions of other laws and regulations related to the filling of acting regional heads, in this case the Elections Law and the State Civil Apparatus Law as general law (*Lex Generali*) for TNI members.

The appointment of active TNI Soldiers as the Acting Regent of West Seram, Maluku Province clearly violates the provisions of applicable laws and regulations in Indonesia, in this case the Law on the Election of Governors, Regents, and Mayors, the State Civil Apparatus Law, and the Indonesian National Army Law, are not even regulated in laws and regulations, other than not being included in the types of positions not mentioned in the TNI Law, TNI Brigadier General Andi Chandra Asa'duddin legally does not meet the qualifications as Acting Regent, the position of Acting Regent does not have the qualifications of positions that require special skills such as war operations or pursuit and search operations in the forest and military background that does not have direct relations with civilian bureaucrats has the potential to cause confusion in the implementation of government in the Regions.

B. Limitation of Authority of Acting Regional Head in Implementing Regional Government

Acting Regional Head is a person who fills the position of regional head during the transition period until the re-election of a new regional head legally through direct election by the community, further explained in the Law on the Election of Governors, Regents and Mayors, which states that to fill vacancies in the position of Governor, an Acting Governor is appointed from the position of intermediate high leader. Meanwhile, to fill the vacancy in the position of Regent / Mayor appointed Acting Regent / Mayor who comes from the position of primary high leader. The filling of state offices (*staatsorganen, staatsambten*) is one of the important elements in constitutional law. Without being filled with officials, the functions of state departments cannot be carried out properly.¹⁰

The term authority or authority is equated with "*authority*" in English.¹¹ In carrying out their duties and authorities, the Acting Governor, Regent and Mayor must convey and report the implementation of their duties to the Minister of Home Affairs, it should be emphasized that not all authority possessed by the regional head can be exercised by the acting regional head. So vital is the role of the regional head as the leader of regional government, so that if there is a vacancy in the position of regional head can cause problems in governance and the administration of local government.¹²

The acting regional head, although temporary, is basically a substitute for the regional head, making it have the same authority as the authority attached to the definitive regional head. Authority or authority is the power of law, the right to rule or act; The right of power of public officials to comply with the rule of law within the scope of carrying out public obligations.¹³ It is evident that there is no regulation that limits the authority of the acting regional head until the birth of Government Regulation Number 49 of 2008, guided by Article 132 A paragraph (1) there are restrictions on the authority of the acting regional head as follows: "*The acting regional head or acting regional head as referred to in Article 130 paragraph (1) and paragraph (3) and Article 131*

¹⁰ Ni'matul Huda, 2010, *Hukum Tata Negara Indonesia*, Rajawali Press, Jakarta, Hlm. 8

¹¹ Abdul Latif, 2014, *Hukum Administrasi dalam Praktik Korupsi*, Prenanda Media Group, Jakarta, Hlm. 6

¹² Akhmad Marwi, "Kewenangan Penjabat Kepala Daerah Di Bidang Kepegawaian Dalam Menyelenggarakan Pemerintahan Daerah (Studi Pada Pemerintahan Kota Mataram)", *Jurnal Ius* Vol. IV No. 3, Desember (2016), *Kajian Hukum dan Keadilan Ius*, Hlm. 542

¹³ Nur Basuki Minarno, 2010, *Penyalahgunaan Wewenang dan Tindak Pidana Korupsi Dalam Pengelolaan Keuangan Daerah*, Laksbang Mediatama, Jakarta, Hlm. 65

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paragraph (4), Those appointed to fill vacancies in the position of regional heads due to resignation to nominate/be nominated to be candidates for regional heads/deputy regional heads, as well as regional heads appointed from deputy regional heads who replace regional heads who resign to nominate/be nominated as candidates for regional heads/deputy regional heads are prohibited:

a. Transferring employees:

Regional civil service is a system and procedure regulated in laws and regulations. In the national civil service system, civil servants have an important position in the administration of government and function as a means of unifying the nation.¹⁴ In line with the decentralization policy, some of the authority in the field of personnel is handed over to the regions to be managed in the regional personnel system. As a consequence of the decentralization of the personnel management system using a combination of *unified system* and *separated system*, it means that there are parts of authority that remain central authority and there are parts of authority that are handed over to the regions to be implemented by regional personnel coach.

b. Cancel licenses that have been issued by previous officials and/or issue licenses that are contrary to those issued by previous officials:

Licensing according to Sjachran Basah is a one-sided act of State Administration Law that applies regulations in concrete terms based on requirements and procedures as stipulated by laws and regulations. Meanwhile, according to Ateng Syatiffuddin, permission aims to remove obstacles so that something that is prohibited becomes permissible. In issuing permits, it must meet 5 elements, namely: juridical instruments, laws and regulations, government organs, concrete events and procedures and requirements.¹⁵ Acting regional heads with relatively short tenures of only one year or can be added another year with the same person or with different people are one reason for prohibiting acting regional heads from issuing permits, because the issuance of a permit is always accompanied by the deadline for the permit. What happens if the permit issued is still valid while the acting regional head who issued the permit has expired and is replaced with a new acting regional head, and the new acting regional head disagrees with the previous acting regarding the permit, it is certain that the party granted the permit feels aggrieved which will eventually cause several problems.

c. Make policies on regional expansion that contradict the policies of previous officials:

Regional expansion is one type of regional formation, philosophically the purpose of regional expansion has two interests, namely the approach to government public services to the community and to improve the welfare of the local community.¹⁶

d. Make policies that contradict previous governance policies and official development programs:

Every policy must be accounted for, the accountability of the definitive regional head with the acting regional head has differences, the definitive regional head must provide an accountability report to three parties (government, DPRD, and the community) while the acting regional head must only submit one accountability report to the president through the minister of home affairs for the acting governor, and to the minister of home affairs for the acting regent/mayor. This is because the way an official is obtained is different from that of a definitive official. The definitive Regional Head obtains direct authority from the people known as the community agreement initiated by J.J. Rosseu which is then known as elections in Indonesia for the election of Members of the legislature (DPR, DPD, and DPRD) as well as the President and Vice President and regional elections for the election of Regional Heads. While the Acting Regional Head has a political element where the Minister of Home Affairs determines the Acting Regent or Mayor based on the proposal of the governor and the appointment of the Acting Governor by the president on the proposal of the Minister of Home Affairs. So that the authority and accountability are different.

This limitation of authority can only be exercised with exceptions if it has the approval of the Minister of Home Affairs, as stipulated in Article 132A Paragraph (1) and Paragraph (2) of Government Regulation Number 49 of 2008. The limitation of authority of the Acting Regional Head is also regulated in the Decree of the State Civil Service Agency Number K.26-30 / V.100-2 / 99 dated October 19, 2015 concerning Explanation of the Authority of the Acting Regional Head in the field of personnel, that:

- a.) The Acting Regional Head does not have the authority to take or determine policies and decisions that have legal consequences on the personnel aspect to make mutations in employees in the form of appointment, transfer and dismissal in / from the position of civil servants, determine disciplinary decisions in the form of release from office or dismissal with respect not at his own request as a civil servant except with the approval of the Minister of Home Affairs.
- b.) The Acting Regional Head has authority in the aspect of personnel without the need to obtain the approval of the Minister of Home Affairs, including the appointment of CPNS / civil servants, promotion, granting marriage and divorce permits, disciplinary decisions other than those in the form of release from office or dismissal with respect not at their own request as civil servants other than because they are sentenced to discipline.

¹⁴ Max Boli Sabon, 2011, *Hukum Otonomi Daerah*, Universitas Atma Jaya, Jakarta, Hlm. 206

¹⁵ Ridwan HR, 2006, *Hukum Administrasi Negara*, PT. Raja Grafindo persada, Jakarta, Hlm. 201

¹⁶ Siswanto Sunarno, 2008, *Hukum Pemerintahan Daerah di Indonesia*, Sinar Grafika, Jakarta, Hlm. 15

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The restrictions imposed can be understood because the existence of the acting officer is based on the appointment not election, further with this the Minister of Home Affairs has issued Circular Number 821/5292/SJ signed on September 14, 2022 concerning the Approval of the Minister of Home Affairs to acting officers, acting regional heads and temporary officials on the aspect of staffing regional apparatus, the circular gives approval to carry out several aspects In staffing, among others: a.) Termination, suspension, imposition of sanctions and/or other legal actions to officials of the State Civil Apparatus within the provincial/district/city local governments who commit disciplinary violations and/or follow up legal processes in accordance with laws and regulations; b.) Approval of mutations between regions and / or between government agencies in accordance with the provisions and requirements stipulated in laws and regulations.

Thus, based on the Circular, now an Acting Regional Head has wider authority, especially in the aspect of staffing, according to the Minister of Home Affairs, the Circular was issued with the aim of efficiency and effectiveness of local government administration. however, the issuance of the Circular was criticized and regarded as the Home Minister's rejection of higher legal provisions. Citing a study conducted by the Center for Constitutional Law Studies, Faculty of Law, Universitas Islam Indonesia (PSHK FH UII) that the Circular Letter issued by the Minister of Home Affairs violates the provisions contained in Government Regulation Number 49 of 2008. The issuance of the Circular violates the principle of *lex superior derogate legi inferior* which means that rules of a higher degree must be used and override rules of a lower degree.¹⁷

Government officials do have discretionary authority when necessary. Discretion itself can be interpreted as provisions and/or activities carried out by government officials in an effort to deal with concrete problems experienced by government managers in terms of laws and regulations that will provide choices, do not regulate, are incomplete, or unclear, and/or there is government stagnation.¹⁸

The realization of discretionary authority can be done by issuing *beleidsregel* policy regulations. The content of the provisions contains separate general rules that go beyond the scope of the rules of laws and regulations made operationally regulated. But it is important to note that institutions that make policy regulations do not have the power to form laws and the like. The policy regulatory framework is only legally related but not directly legally binding. The preparation of policy regulations is based on the existence of a consideration room that aims to take regulatory public legal actions given by the framer of the law to government officials on their own initiative in the form of special actions to be carried out to solve problems of government implementation experienced at a certain time and require regulation.¹⁹

The action of the Minister of Home Affairs as a government official who issued a regulation in the form of a Circular that gives permission to officials in order to dismiss and transfer employees is basically certainly done with various considerations. However, if the Minister of Home Affairs gives general approval, the Minister of Home Affairs has unwittingly formed a new legal norm in which through *the regulation of the policy beleidsregel* cannot form a new legal norm, especially the institution that issues policy regulations cannot form laws and related regulations.

This then makes the issue of limiting the authority of acting regional heads, especially in the context of the 2024 Regional Head Elections which are held simultaneously, even more unclear. Whether the authority possessed by the acting regional head refers to the authority of the definitive official in accordance with Law Number 23 of 2014 or refers to other regulations where there are limitations. This is not clearly regulated so that the problem of the absence of a legal basis certainly has an impact on the effectiveness of local government administrators. Seeing that these acting regional heads have served for a long time, the government should clarify the authority possessed by the acting regional heads.

CONCLUSIONS

1. The arrangement for the appointment of members of the Indonesian National Army to active status as Acting Regional Heads is contrary to the provisions of laws and regulations, namely: Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors, concerning the mechanism for filling vacancies in regent positions originating from JPT pratama, Law Number 5 of 2014 concerning the State Civil Apparatus, which outlines the placement of TNI members to fill civilian positions within central agencies is not Including regional agencies. and Law Number 34 of 2004 concerning the Indonesian National Army, which affirms 10 civilian positions that may be occupied by active TNI members and does not mention the position of Acting Regional Head. so that active TNI members cannot be appointed as Acting Regional Heads and do not meet the qualifications to occupy the position of Acting Regional Heads.

¹⁷ PSHK FH UII, 2022, "Pernyataan Pusat Studi Hukum Tata Negara, Fakultas Hukum Universitas Islam Indonesia (PSK FH UII) tentang "Surat Edaran Menteri Dalam Negeri tentang Persetujuan Menteri Dalam Negeri Terhadap PLT/Pejabat/Aspek Pelaksana Sementara Peralatan Daerah Kepegawaian", Siaran Pers Nomor: 16/SP/PSHK/IX/2022 tanggal 20 Juni, 2022

¹⁸ Pasal 23 Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan

¹⁹ Ni Luh Gede Atstariyani, Bagus Hermanto, "Paradigma Ilmiah dalam Menyoal Eksistensi Peraturan Perundang-undangan dan Peraturan Perundang-undangan: Penafsiran Putusan Mahkamah Agung" *Jurnal Peraturan Perundang-undangan* 16 No. 4, (2019), Hlm. 436

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2. The authority of the Acting Regional Head is limited to four things, namely prohibiting employee mutations, canceling licenses that have been issued by previous officials and/or issuing permits that are contrary to those issued by previous officials, making policies on regional expansion that are contrary to the policies of previous officials, and making policies that are contrary to the policies of the administration and development programs of previous officials. The limitation of such authority may be waived with the written approval of the Minister of Home Affairs based on the Circular. However, the provisions for obtaining written approval from the Minister of Home Affairs are not regulated in the applicable laws and regulations.

SUGGESTION

The government should evaluate its policy in appointing members of the Indonesian National Army as Acting Regional Heads, forming laws and regulations, in this case the President together with the House of Representatives need to make changes to the provisions related to the appointment of Acting Regional Heads, especially the provisions in Law Number 10 of 2016 concerning Regional Elections and issue Government Regulations as derivative or implementing rules governing mechanisms, procedures and requirements for the appointment of the Acting Regional Head and the authority and duties of the Acting Regional Head. as well as providing space for participation for the community to be actively involved in the determination of the Acting Regional Head.

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