

The Legal Status of Acting Regional Heads in Indonesia as a Solution for Government Continuity in the Postponement of Regional Elections

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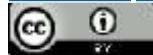
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ABSTRACT

This study analyzes the legal status of Acting Regional Heads within Indonesia's constitutional system as a solution to the postponement of Regional Head Elections. The postponement of such elections has the potential to create a leadership vacuum that may disrupt the continuity of regional governance. This research employs a normative juridical method, using both statutory and conceptual approaches. The findings indicate that, formally, the existence of Acting Regional Heads has a valid legal basis. However, there remain normative weaknesses concerning the limits of authority, accountability mechanisms, and democratic legitimacy. Acting Regional Heads do not possess a direct mandate from the people, which may lead to a legitimacy deficit. Nevertheless, their presence remains necessary to ensure the continuity of governance. Therefore, stronger, clearer, and more comprehensive regulatory frameworks are required.

INTRODUCTION

The implementation of Regional Head Elections constitutes one of the most concrete manifestations of the principle of direct democracy within Indonesia's constitutional system. Through this mechanism, local citizens are granted the right to determine who will lead their regional governments. This right is constitutionally guaranteed under Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which stipulates that governors, regents, and mayors are elected democratically.

In practice, however, the conduct of Regional Head Elections does not always proceed according to the established schedule. Various factual conditions—ranging from natural disasters and disease outbreaks to situations threatening public order—may hinder the implementation of such democratic processes. These circumstances give rise to a serious legal issue: when the term of office of a regional head expires while a newly elected official has not yet been installed, a leadership vacuum emerges, potentially disrupting the functioning of regional governance (Raja & Siburian, 2024).

This phenomenon was evident during the 2020 simultaneous Regional Head Elections. The COVID-19 pandemic prompted the government to issue Government Regulation in Lieu of Law (Perppu) Number 2 of 2020, which postponed the elections from September to December 2020 (Noviani, 2022). As a logical consequence of this postponement, the government appointed Acting Regional Heads in regions where the incumbents' terms had expired before the elections could be conducted.

The appointment of Acting Regional Heads is not, in fact, a new legal instrument within Indonesia's system of regional governance. However, the issue becomes increasingly complex when such appointments extend over a considerable period and occur across a significant number of regions, as seen in the 2022–2024 period, during which hundreds of regions were led by appointed officials rather than democratically elected ones. This situation raises fundamental questions concerning democratic legitimacy, the clarity of authority limits, and the accountability mechanisms of Acting Regional Heads (Pratama et al., 2024).

Normatively, Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors into Law most recently amended by Law Number 6 of 2020 (Regional Head Election Law) has regulated the existence of Acting Regional Heads. Nevertheless, the existing regulatory framework still contains unresolved normative gaps, particularly regarding the limits of authority in making strategic regional policies, the effectiveness of oversight mechanisms, and the establishment of accountability standards equivalent to those of definitive regional heads (Abustan, 2022).

The legal status of Acting Regional Heads is also closely linked to the principle of continuity of government, which constitutes a fundamental doctrine in administrative law. This principle requires that public services and governmental functions must not be interrupted, even in the event of leadership

transitions or delays in electoral processes (Firdaus Arifin, et.al. 2025). Accordingly, the appointment of Acting Regional Heads represents the state's effort to maintain governmental continuity in situations where the timely conduct of Regional Head Elections is not feasible (Irfan, 2025).

However, if not regulated in a clear and comprehensive manner, the mechanism of appointing Acting Regional Heads may potentially weaken local democracy. Appointed regional heads possess a fundamentally different basis of legitimacy compared to those elected directly by the people. The absence of a direct public mandate has implications for both the accountability and responsiveness of regional governance policies.

These normative issues highlight the need for a comprehensive and systematic academic analysis of the legal status of Acting Regional Heads within Indonesia's constitutional framework. Such analysis is increasingly relevant given the recurring trend of postponed Regional Head Elections, as well as the possibility of similar situations arising in the future, which demand more robust and anticipatory regulatory preparedness. Based on the foregoing background, this study formulates the following research question: 1) How is the legal status of the Acting Regional Head in the Indonesian constitutional system when the regional head election is postponed? 2) How are the limits of the Authority and Accountability of the Acting Regional Head?

LITERATURE REVIEW

Theory of Popular Sovereignty

Indonesia is a state that embraces the principle of democracy, or popular sovereignty. This is reflected in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "sovereignty rests with the people and is exercised in accordance with the Constitution." This provision indicates that Indonesia recognizes and grants political power to the people, and that political decisions are made based on the established constitutional framework (Rohmah, 2025).

Jean Jacques Rousseau argues that popular sovereignty is manifested through the expression of the general will. This will is conveyed in two ways:

1. The will of all (*Volonté de Tous*), which is exercised by the people at the moment of state formation, particularly through the social contract.
2. The general will (*Volonté Générale*), which operates after the establishment of the state, typically through a majority voting system (Dewi Haryanti, 2023).

In general, the principle of popular sovereignty or democracy asserts that the people possess the authority to determine how they are governed and by whom. This principle is grounded in the assumption that all individuals are equal as human beings and as citizens, such that no individual or group inherently has the right to rule over others. Therefore, governing authority must derive from the mandate and consent of the people. This principle is also rooted in each individual's right to self determination and to participate in decision making processes that affect collective life. Accordingly, under the principle of popular sovereignty, forms of government exercised by a single individual such

as dictatorship or absolute monarchy or by a small elite lack ethical legitimacy (Hendra Nurtjahjo, 2008).

In the context of regional governance, the legitimacy of regional heads is obtained through the mechanism of direct Regional Head Elections. Acting Regional Heads, who are appointed rather than elected, do not possess equivalent democratic legitimacy. The legitimacy of governance depends on responsiveness to the preferences of the governed, something that can only be ensured through a competitive electoral process.

Theory of the Rule of Law

Indonesia is a state based on the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Although the term “rule of law” appears simple, it embodies a long historical development of political and legal thought. Aristotle explained that the idea of the rule of law originated from the concept of the polis, a city state characterized by a limited territory and relatively small population, in contrast to modern states with vast territories and large populations. Within the polis, state affairs were conducted through deliberative assemblies (ecclesia), in which citizens directly participated in governmental decision making (Shidiq et al., 2024).

At that time, the rule of law was understood as a state founded upon law with the primary objective of ensuring justice for all its citizens. Justice was regarded as an essential condition for achieving collective well being, and its realization required the cultivation of moral values and ethical awareness among individuals so that they could become good citizens (Shidiq et al., 2024).

Azhari argues that the concept of the rule of law in Indonesia differs from those developed within the Anglo Saxon and Continental European traditions. According to him, the rule of law in those traditions is grounded in liberal individualism, which places individual freedom at the center of the legal and constitutional system. In contrast, Indonesia’s rule of law is built upon the nation’s philosophical foundation, namely Pancasila. A fundamental distinction also lies in how the position of the individual is perceived in relation to society: the Indonesian concept does not treat the individual as separate or dominant, but instead emphasizes balance and harmony between individual interests and the collective good (Azhary, 1995).

Accordingly, the theory of the rule of law serves as a basis for assessing that the appointment of Acting Regional Heads, as a consequence of the postponement of Regional Head Elections, must continue to uphold legality, legal certainty, and regulatory clarity in line with the principle of popular sovereignty. Therefore, clear regulations concerning the time limits of election postponement, the scope of authority, and the accountability mechanisms of Acting Regional Heads are essential to ensure that constitutional practice remains consistent with the Pancasila based rule of law, which emphasizes a balance between legal order, democracy, and the common good.

Theory of the Legitimacy of Power

The theory of the legitimacy of power places public acceptance as an essential element in the validity of governmental authority. Max Weber explains

that legitimacy in modern states primarily rests on rational legal authority, namely authority that is considered valid because it is established and exercised in accordance with prevailing legal norms. Within this framework, public officials derive their authority not merely from formal office, but from societal recognition that such authority arises from procedures that are proper, transparent, and accountable. Contemporary scholarship further emphasizes that the legitimacy of modern governance cannot rely solely on legality, but must also be reinforced by public trust, participation, and the effectiveness of state institutions (Qoirunnisa & Wahyuni, 2025).

From the perspective of constitutional democracy, the legitimacy of power is closely related to the source of political mandate. Authority that emerges from electoral processes possesses a stronger basis of legitimacy, as it derives from the consent of the people as the holders of sovereignty. In contrast, officials appointed through administrative mechanisms possess only limited procedural legitimacy. The problem of legitimacy becomes more pronounced when such appointments occur within political offices that are inherently expected to be grounded in popular mandate, as this may generate public skepticism regarding policy responsiveness and the quality of political representation (Riyadi & Mu'alim, 2025).

Although the appointment of Acting Regional Heads fulfills the aspect of legality under statutory regulations, from the perspective of legitimacy of power, there remain issues that warrant further examination, particularly because such appointments do not originate from a direct mandate of the people through Regional Head Elections. This becomes increasingly significant when the tenure of Acting Regional Heads extends for a considerable period up to one or two years thus requiring that the temporary nature of such positions be carefully maintained in a proportionate manner.

METHODOLOGY

This study applies a qualitative research method with a normative juridical approach. According to Mukhtar, qualitative research is a method used by researchers to develop knowledge or theories within a particular period (Mukhtar, 2013). Normative juridical research is descriptive analytical in nature and focuses on the study of legal norms, rules, principles, and written legal doctrines (Marzuki, 2017). It also examines legal doctrines and fundamental principles within the field of law (Zainuddin Ali, 2009).

This study applies two approaches. The first is the statute approach, which involves the examination of relevant laws and regulations. The second is the conceptual approach, which entails the analysis of legal concepts, such as sources of law, functions of law, and the existence and role of legal institutions (Nasution, 2008).

The analysis is presented using a descriptive analytical method. Descriptive analytical research aims to systematically and accurately describe the characteristics of facts whether individuals, groups, or conditions—and to provide a structured analysis to address the research questions (Rianto Adi, 2000).

The legal materials used in this study consist of three types: primary legal materials, namely applicable laws and regulations; secondary legal materials, including supporting literature such as books, scholarly articles, legal journals, online references, and other sources relevant to the research topic; and tertiary legal materials, such as legal dictionaries and encyclopedias, which serve as complementary and explanatory sources for the primary and secondary materials (Marzuki, 2017).

RESEARCH RESULT AND DISCUSSION

The Legal Status of the Acting Regional Head in the Indonesian Constitutional System During the Postponement of Regional Head Elections

The postponement of Regional Head Elections is regulated under Articles 120 and 121 of Law Number 10 of 2016 on Regional Head Elections, which stipulate that in the event of riots, security disturbances, natural disasters, non-natural disasters, or other disruptions affecting part or all of the electoral regions such that certain stages or the entirety of the simultaneous elections cannot be conducted follow-up elections (*pemilihan lanjutan*) or re-run elections (*pemilihan susulan*) shall be held.

The provisions concerning the postponement of Regional Head Elections in Articles 120 and 121 of the Regional Head Election Law essentially demonstrate that the legislature has anticipated the possibility of disruptions to the electoral process due to extraordinary circumstances. However, these provisions primarily focus on the continuity of the electoral process and do not explicitly regulate the legal consequences of a vacancy in the office of regional head when the term of the incumbent expires before follow up elections can be conducted. It is within this normative gap that the mechanism for appointing Acting Regional Heads gains relevance as an instrument to ensure the continuity of regional governance (Mahardika et al., 2022).

Normatively, the legal status of Acting Regional Heads is governed by several key legal instruments. Law Number 10 of 2016 on Regional Head Elections specifically regulates the mechanism for appointing Acting Regional Heads in situations where elections cannot be conducted on time. Article 201 of the Law provides that, to fill a vacancy in the office of regional head, the government appoints an Acting Regional Head from among senior high ranking officials (*pejabat pimpinan tinggi pratama*). The elucidation of Article 201 paragraph (9) further states that the term of office of Acting Governors, Acting Regents, and Acting Mayors is one year and may be extended for an additional one year period, either with the same or a different appointee.

At the level of technical regulation, Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors provides more detailed provisions regarding the procedures for appointment, term of office, scope of authority, and mechanisms of accountability of Acting Regional Heads. This regulation was issued in response to the large number of Acting Regional Heads appointed ahead of the 2024 simultaneous Regional Head Elections. More than 271 regions comprising provinces, regencies, and municipalities were led by Acting Regional Heads simultaneously, with terms of office in many cases lasting one to two years. This

situation arose from the design of the 2024 simultaneous elections, which required the synchronization of electoral schedules nationwide. Consequently, regions whose leaders' terms expired before November 2024 were unable to conduct their own elections and had to remain under the leadership of Acting Regional Heads (Handayani, 2026).

This situation must be distinguished from the postponement of Regional Head Elections as regulated under Articles 120 and 121 of the Regional Head Election Law, as it does not arise from emergency conditions such as disasters or security disturbances, but rather from the policy design of nationwide electoral synchronization. Accordingly, the extension of the tenure of Acting Regional Heads during this period is more accurately understood as a consequence of electoral policy rather than a postponement in the normative sense of the law. This distinction is important because issues of democratic legitimacy arise not only in the context of election postponements due to extraordinary circumstances, but also within the legal design of simultaneous elections that result in prolonged vacancies filled by appointed officials.

The issue of democratic legitimacy constitutes the most fundamental aspect in the discourse on Acting Regional Heads. Unlike definitive regional heads, who derive their mandate directly from the people through Regional Head Elections, Acting Regional Heads are appointed through an administrative mechanism by the Minister of Home Affairs. This inherently places them in a position that is more accountable to the central government than to local constituents.

The Constitutional Court, through Decision Number 67/PUU-XIX/2021, has affirmed that the appointment of Acting Regional Heads does not contravene the Constitution, provided that it is implemented as a temporary solution and not as a permanent substitute for the electoral democratic process. The Court emphasized that the constitutionality of Acting Regional Heads depends on the temporary and proportionate nature of their appointment (Helmi Chandra SY, 2024).

The problem becomes more pronounced when Acting Regional Heads serve for extended periods up to two years in some cases blurring the line between a "temporary solution" and a "substitution of leadership." In such circumstances, the democratic legitimacy deficit inherent in the position of Acting Regional Heads may have tangible implications for the quality of regional governance, particularly in terms of policy responsiveness to local needs and aspirations. The extension of such tenure is partly due to the absence of explicit legal provisions governing the maximum duration of election postponement, thereby creating legal uncertainty and opening the possibility for prolonged appointments without adequate democratic legitimacy.

The limits of the Acting Regional Head's Authority and Accountability

The regulation of the limits of authority of Acting Regional Heads within Indonesia's legal system is governed through a layered set of legal instruments. Normatively, the authority of Acting Regional Heads in carrying out regional governmental functions refers to Article 65 paragraph (1) of Law Number 23 of 2014 on Regional Government, which establishes the duties and powers of

regional heads in general and also applies to Acting Regional Heads in their capacity as temporary officeholders.

Specific limitations that distinguish the authority of Acting Regional Heads from that of definitive regional heads are set out in Article 132A of Government Regulation Number 49 of 2008 concerning the Election, Ratification of Appointment, and Dismissal of Regional Heads. This provision prohibits Acting Regional Heads from carrying out civil service mutations, revoking licenses issued by previous officials, adopting regional expansion policies that contradict prior policies, and making decisions that conflict with established governmental programs.

These provisions have been further updated and strengthened through Article 15 paragraph (2) of Minister of Home Affairs Regulation Number 4 of 2023, which contains four prohibitions that are substantively aligned with Government Regulation No. 49 of 2008, but formulated in a more operational and contextual manner in accordance with contemporary regional governance dynamics. Normatively, a relatively clear boundary exists between the scope of authority of Acting Regional Heads and that of definitive regional heads. However, in practice, interpretative differences may still arise, as not all strategic policies are clearly defined within existing regulations.

From the perspective of accountability, there is a fundamental distinction between the accountability mechanisms of definitive regional heads and Acting Regional Heads. Definitive regional heads are accountable to the Regional House of Representatives (DPRD) and ultimately to the electorate through subsequent Regional Head Elections. In contrast, Acting Regional Heads are structurally accountable to the Minister of Home Affairs who appoints them, resulting in limited local democratic control. Therefore, the reformulation of legal policy concerning Acting Regional Heads should not merely address administrative technicalities, but must also consider its implications for the balance of central-regional relations and the quality of regional autonomy as mandated by the Constitution and the spirit of reform (Abustan, 2022).

The practice of filling vacancies in regional leadership during the postponement of Regional Head Elections is not unique to Indonesia. The International IDEA notes that various democratic countries have similar mechanisms, albeit with differing standards and limitations. In general, countries with more established democratic traditions tend to regulate such mechanisms more strictly, both in terms of limiting authority and ensuring independent oversight (International IDEA, 2026).

In the Philippines, under Republic Act No. 7160 (the Local Government Code of 1991), acting regional officials are limited to performing routine administrative functions and are restricted from exercising discretionary powers, such as appointing, suspending, or dismissing personnel. This limitation reflects the principle that acting officials are intended solely to maintain the continuity of governance without encroaching upon strategic policy domains reserved for definitive officeholders.

Meanwhile, in India, through the mechanism of President's Rule under Article 356 of the Constitution of India, state governance is administered by the

governor on behalf of the President as a representative of the central government. This mechanism is subject to strict parliamentary oversight and constitutionally defined time limits. In practice, the governor may be assisted by administrators or advisors to support governance functions during the transitional period (Das, 2023). These comparative models demonstrate that limitations on authority, certainty of tenure, and oversight mechanisms are essential instruments for maintaining the legitimacy of acting officials within a democratic system.

This comparison indicates that Indonesia needs to strengthen the regulatory framework governing Acting Regional Heads by adopting clearer standards and more effective oversight mechanisms. Reformulating regulations in line with international best practices would enhance the legitimacy and accountability of Acting Regional Heads without undermining their role as instruments for ensuring the continuity of governance.

CONCLUSIONS AND RECOMMENDATIONS

The legal status of Acting Regional Heads within Indonesia's constitutional system is normatively grounded in a valid legal framework as an instrument to fill leadership vacancies arising from the postponement of Regional Head Elections as well as from the design of nationwide electoral simultaneity. Their existence plays a crucial role in ensuring the continuity of regional governance. However, the primary issue does not lie in the regulation of the tenure of Acting Regional Heads which has been normatively established but rather in the absence of a clear maximum limit for postponing Regional Head Elections, resulting in legal uncertainty. This condition creates room for the de facto extension of the tenure of Acting Regional Heads, thereby potentially blurring the temporary nature of such positions. Moreover, Acting Regional Heads continue to face a deficit of democratic legitimacy, as they do not derive a direct mandate from the people, which, over time, may affect the quality of local democracy and the accountability of regional governance.

The government and the legislature need to reformulate legal policy by explicitly establishing a maximum limit on the postponement of Regional Head Elections in order to prevent legal uncertainty and avoid the de facto extension of the tenure of Acting Regional Heads. In addition, more detailed and operational regulations are required regarding the limits of authority of Acting Regional Heads, particularly in the formulation of strategic policies, to ensure that they do not exceed the powers of definitive regional heads. Strengthening oversight mechanisms involving Regional Houses of Representatives (DPRD) and independent institutions is also essential to enhance accountability and minimize the deficit of democratic legitimacy. In the long term, alternative institutional designs should be considered to ensure the continuity of governance without undermining the principle of popular sovereignty as the foundation of the democratic system.

ADVANCED RESEARCH

This study has several limitations that warrant critical consideration. First, the use of a normative juridical approach results in an analysis that is primarily focused on regulatory and doctrinal aspects, and therefore does not fully capture

the empirical dynamics related to the implementation of the authority of Acting Regional Heads in practice, including variations in policy practices across different regions. Second, this study does not incorporate quantitative analysis or field data that could objectively measure the impact of Acting Regional Heads on the quality of public services, local political stability, and central regional relations. Accordingly, future research is recommended to adopt a socio legal or empirical legal studies approach by utilizing field data, interviews, and public policy analysis in order to assess the effectiveness and practical implications of the appointment of Acting Regional Heads.

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Number 1 of 2014 on the Election of Governors, Regents, and Mayors as Law, as Law

Government Regulation Number 49 of 2008 on the Third Amendment to Government Regulation Number 6 of 2005 on the Election, Ratification, Appointment, and Dismissal of Regional Heads and Deputy Regional Heads

Minister of Home Affairs Regulation Number 4 of 2023 on Acting Governors, Acting Regents, and Acting Mayors