

# **AUTHORITY OF THE EXECUTIVE BOARD IN APPOINTING ACTING SUBSTITUTES FOR REGIONAL HEADS IN A PRESIDENTIAL GOVERNMENT SYSTEM ACCORDING TO THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA**

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## **Abstract**

In 2023 there are 17 governors, 38 mayors and 115 regents vacant, 2 year vacancy, limited authority (running programs are constrained), Echelon 1, TNI and Polri officials are active in concurrent positions, sociology issues do not involve the community. This writing is about the position of the executive branch in appointing Acting Regional Heads in the 2024 simultaneous elections, and determining the mechanism for appointing Government Officials in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia. The conclusion of this writing is that the appointment of Regional Heads of the executive branch creates a shift in the ideology of the four Pancasila precepts, and a shift in the interpretation of the executive branch of the Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, as well as Law no. 23 of 2014. The mechanism for appointing government officials according to Pancasila and the 1945 Constitution of the Republic of Indonesia, is a by-election which is the format of the theory of people's sovereignty, participatory democracy, representative democracy, tricameral system, and Law no. 23 of 2014. The first writing recommendation is that the President approves a Presidential Regulation concerning the implementation of Law no. 6 of 2020, because the span of control from the President was handed down to the Ministry of Home Affairs to determine Regional Heads. The second recommendation involves the General Election Commission, DPRD, and customary institutions registered with the National Unity and Political Agency of the Ministry of Home Affairs. This is in accordance with Law no. 1 of 2014 and Law no. 17 of 2014 the authority of the legislature to monitor the law.

**Keywords:** Democracy, Appointment of Officials, By-Elections.



Steidy Runby explaining the model of simultaneous elections in Indonesia, against the background of the Constitutional Court (MK) Decision No. 14/PUU-XI/201323 January 2014 (Yadav et al., 2022):

Stated:

1. Partially grant the Petitioner's request;

1.1 Article 3 paragraph (5), Article 12 paragraph (1) and paragraph (2), Article 14 paragraph (2), and Article 112 of Law Number 42 of 2008 concerning the General Election of the President and Vice President (State Gazette of the Republic of Indonesia of 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924) contrary to the 1945 Constitution of the Republic of Indonesia;

2.1 Article 3 paragraph (5), Article 12 paragraph (1) and paragraph (2), Article 14 paragraph (2), and Article 112 of Law Number 42 of 2008 concerning the General Election of President and Vice President (State Gazette of the Republic of Indonesia of 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924) does not have binding legal force;

2. The decision in number 1 above applies to the holding of the 2019 general election and subsequent general elections v;

Several crucial issues regarding the vacancy in regional head positions from 2022 to 2024 include a large number of vacancies, a minimum 2-year vacancy period, and limited authority (progressive development programs are underway). In addition, many Echelon 1, TNI and Polri officials are active in holding concurrent positions to fill these positions. Jimly Ashidique, as written by Charles Simabura, explained that Indonesia adheres to a tricameral representative system (Passaglia, 2018). The tricameral system doubles as a three-chamber model because each institution has a permanent function and has different authorities. Indonesia has three representative institutions at the same time, namely the People's Consultative Assembly (MPR), the People's Representative Council (DPR), and the Regional Representatives Council (DPD), therefore it is considered tricameral (Salman & People, 1945). After the enactment of the amendments to the 1945 Constitution of the Republic of Indonesia, the MPR no longer consisted of members of the DPR. Strengthening the DPR and DPD in the amendments to the 1945 Constitution of the Republic of Indonesia, is a more democratic system of people's representation (Tegnan et al., 2018).

Another problem is the transformation of political positions into bureaucratic positions for Regional Heads. Commissioner of the State Civil Apparatus Commission (KASN), Arie Budhiman revealed that the 2024 general election was mainly related to the motives of bureaucratic politicization, political bureaucracy, and technological disruption. Member of the Ombudsman Robert Na Endi Jaweng explained the neutrality of ASN. The politicization of the bureaucracy means that politics intervenes in the bureaucracy, political parties, campaign teams, regional head candidates, state head candidates, or incumbents who intervene in the bureaucracy to support him. The 2024 Simultaneous Elections saw the transformation of the political position of the Regional Head originally through elections, into a bureaucratic position

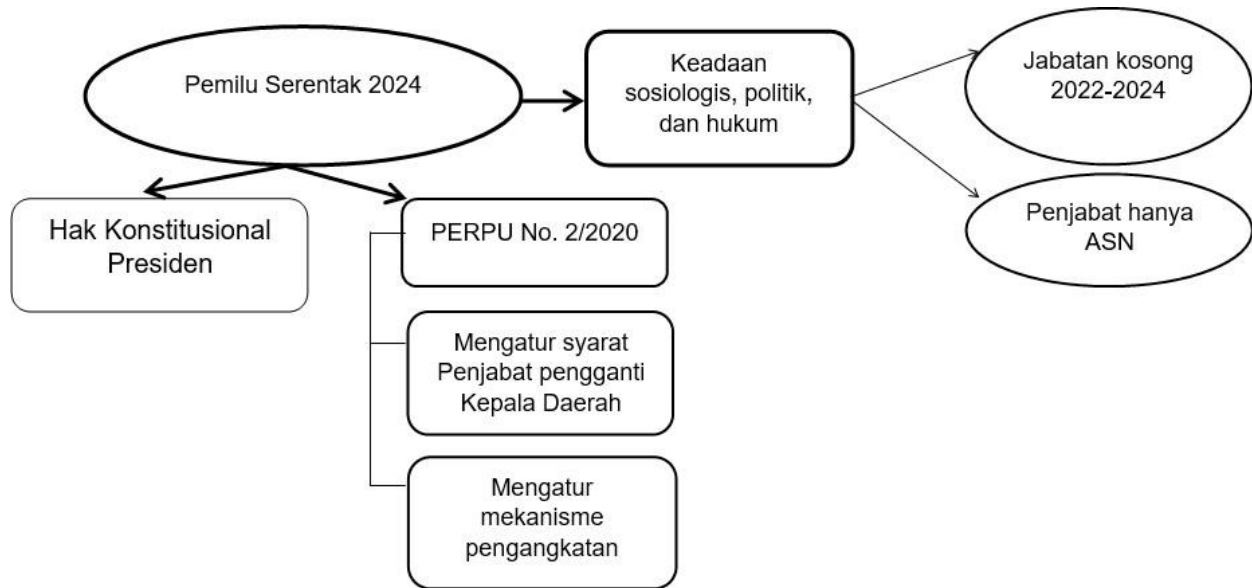


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with the appointment of an Acting Regional Head (Zuhro, 2021).

The direct appointment of an Acting or Acting Person as a Regional Head by the executive branch, both the President and the Ministry of Home Affairs, violates the systematic provisions of laws and regulations and legal philosophy. This is based on the 1945 Constitution of the Republic of Indonesia which states that Indonesia is a *rechtsstaat* which has legal consequences for all aspects of governance based on law. Margarito Thursday stated that the appointment of the Acting Regional Head violated the 1945 Constitution of the Republic of Indonesia Article 18 paragraph (4). Where governors/deputy governors, regents/deputy regents, mayors/deputy mayors are democratically elected. So there was no appointment of the Regional Head (Tuanaya, n.d.). Djoehermasyah related to the periodization of regional head positions not regulated in Chapter VI of the 1945 Constitution of the Republic of Indonesia. However, it is regulated in Law no. 23 of 2014 concerning Regional Government. Meanwhile UU No. 10 of 2016 concerning Regional Head Elections, that the regional head term of office is five years. In principle, regional heads may only have two terms with a period of five years (Passaglia, 2018).

Furthermore, direct appointment violates the philosophy of popular sovereignty adhered to in the 1945 Constitution of the Republic of Indonesia. Direct election of regional heads by the people is a form of representation of the people's authority to the state. Direct appointments also erase the theory of representative democracy in the tricameral system adopted by Indonesia. The role of DPD and DPR is a form of people's representation to their country. With a direct appointment, it suppresses the role of the DPR and DPD in carrying out their duties as representatives of the people. Examining the state of the constitution and legal philosophy above, the direct appointment of Acting Regional Head substitutes by the President and the Ministry of Home Affairs violates and betrays the constitution, laws, and is not in accordance with the legal philosophy of popular sovereignty, representative theory, and participatory theory. The author illustrates the analysis of the problem;



**Figure 1:** Acting replacement for the regional head and its problems

- a. 2024 Simultaneous Election; as the juridical basis of Article 201 paragraph (7) Law No.10/2016
- b. President's Constitutional Rights; The 1945 Constitution of the Republic of Indonesia in Articles 10-13 and 15. According to M. Arsyad Mawardi the clause on the constitutional rights of the President is equated with the appointment of state officials (Passaglia, 2018).
- c. Perpu No. 2/2020; the president's right to issue regulations in lieu of laws; Regulates the conditions for acting as a substitute for the regional head, regulates the appointment mechanism.
- d. Sociological, political, and legal conditions.
  - a) Sociology is defined by Spencer and Inkeles as quoted by Abdulsyani, literally sociology is defined as the science of society (Passaglia, 2018). The sociology in Figure 1 here means that the direct appointment of the Regional Head does not involve the community. Even though each region has its own characteristics and needs and this must be done by officials who are known to the community in order to realize the aspirations of the community's needs.
  - b) Politics, defined as the state of the legislature as the representative of the people and the authority of the president, both of which create overlapping political conditions.
  - c) Law, interpreted as a conflict of juridical provisions between the 1945 Constitution of the Republic of Indonesia, the Regional Head Election Law, and Perpu No. 2/2020,
- e. Vacant positions 2022-2024; is a political, sociological, and legal problem.
- f. ASN only acts; is a political, sociological, and legal problem.

The discussion will outline the position of the executive branch in the presidential system to determine and appoint officials to fill in the Interim Replacement (PAW) of Regional Heads in the 2024 Simultaneous Elections and the mechanism for appointing PAW Government Officials in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia in the presidential system.

## **METHODS**

The research methodology used is literature study or called literature study (Sugiyono, 2015), by carrying out a process of setting goals that will help to find out how to reduce employee turnover. Obtain and study related literature that will provide a comprehensive understanding of how employees leave their organizations. Selecting data sources to be used in research, including academic journals, scientific articles, government documents, books, and official publications related to research topics. After the data from the literature is collectively analyzed, a qualitative approach results in the identification of patterns, trends and important information regarding employee departures.

## **RESULTS AND DISCUSSION**

### **Legal Position of Direct Appointment of Acting Substitute for Regional Heads for the 2024 Simultaneous Election Regions**

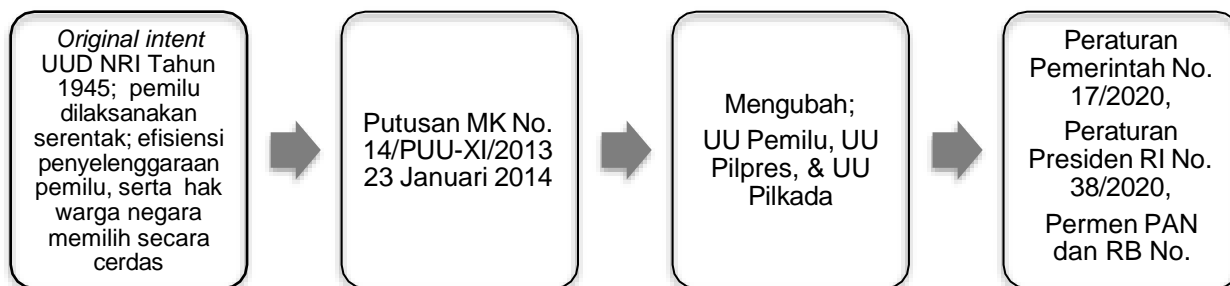
The Big Indonesian Dictionary defines an official as a government employee who holds a certain permanent position. Officials are those who have a mandate in the organization and exercise authority. The word "Acting" means doing duty for another; officiating; holding a temporary rank or position or performing services temporarily; as, an acting captain, manager, president (Fadilah et al., 2023). The phrase "Acting Officer" is used to designate, not an appointed incumbent, but merely a locum tenens, who is performing the duties of an office to which he himself does not claim the title. The Ministry of Home Affairs of the Republic of Indonesia in its article explained the explanation of Articles 65 and 66 of Law no. 23 of 2014 (Black & Nolan, 1969). It was explained that Acting Tasks were held by the deputy governor, deputy regent, and deputy mayor, if the governor, regent, and mayor in an area were temporarily unavailable. The deputy regional head has the same authority as the regional head. Officials and executors have the same duties and responsibilities as regional heads. The difference is from the term of office determined by law. The appointment of the Acting is regulated by the Regulation of the Minister of Home Affairs No. 74 of 2016. Officials are not selected in the political process, but are selected based on administrative qualifications from officials with middle-high leadership within the Ministry of Home Affairs, central and regional (Mufida et al., 2020).

UU no. 10 of 2016 Second Amendment to Law no. 1 of 2015 concerning Stipulation

of Government Regulation in Lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Law (UU No. 10/2016). Article 201 paragraph (7) Law no. 10/2016, it says "Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors from the 2020 elections will serve until 2024." However, due to Covid-19, Perpu No. 2 of 2020 concerning the Third Amendment to Law no. 1 of 2015 concerning the Stipulation of Perpu No. 1 of 2014 Elections for Governors, Regents and Mayors Become Laws (Jurdi, 2018). In its development Perpu No. 2 of 2020 was passed into Law no. 6 of 2020 concerning the Stipulation of Perpu No. 2 of 2020 concerning the Third Amendment to Law No. 1 of 2015 concerning the Stipulation of Perpu No. 1 of 2014 Elections for Governors, Regents and Mayors Become Law (UU No. 6/2020). Article 201A Law no. 6/2020:

- (1). "The simultaneous voting as referred to in Article 201 paragraph (6) was postponed due to a non-natural disaster as referred to in Article 120 paragraph (1).
- (2). The postponed simultaneous voting as referred to in paragraph (1) will be held in December 2020.
- (3). In the event that the simultaneous voting as referred to in paragraph (21) cannot be carried out, the simultaneous voting is postponed and rescheduled immediately after the non-natural disaster as referred to in paragraph (1) ends, through the mechanism referred to in Article 122A."

The juridical provisions for the 2024 Simultaneous Elections The author illustrates as follows:



**Figure 2.** Legal Consequences of the Constitutional Court Decision No. 14/PUU-XI/2013 23 January 2014.

Information:

- a. Original intent of the 1945 Constitution of the Republic of Indonesia; elections are held simultaneously; the efficiency of holding elections, as well as the right of citizens to vote intelligently: is the background of the Constitutional Court's judex juris for the in casu decision (Candra, 2018).
- b. MK Decision No. 14/PUU-XI/2013 23 January 2014: is a juridical decision with permanent legal force (inkracht van beguwisjd) regarding the 2024 Simultaneous Election provisions,
- c. Change; Election Law, Presidential Election Law, & Regional Election Law:
  - a) Election Law and Presidential Election Law:

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Government Regulation in Lieu of Law No. 1 of 2022 concerning Amendments to Law no. 7 of 2017 concerning General Elections, which revoked Law no. 8 of 2012 concerning General Elections for Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council, Law no. 15 of 2011 concerning General Election Organizers, and Law no. 42 of 2008 concerning the General Election of the President and Vice President,

b) Election Law:

Law No. 6 of 2020 concerning the Stipulation of Perpu No. 2 of 2020 concerning the Third Amendment to Law No. 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 Elections for Governors, Regents and Mayors Become Laws (Achyarsyah & Rani, 2021).

- d. Government Regulation no. 17/2020, RI Presidential Regulation No. 38/2020, Permen PAN and RB No. 15/2019; implementing regulations for the Election Law, the Presidential Election Law, the Pilkada Law.

M. Arsyad Mawardi argued that Articles 10-13 and 15 of the 1945 Constitution of the Republic of Indonesia, as well as Indonesian constitutional laws and regulations, did not state the term 'prerogative of the president'. This right is equated with the appointment of state officials. The President's powers are limited to administrative, symbolic, and limitative powers in addition to his main powers as head of government (Mawardi et al., 2023). The executive powers of the President in the 1945 Constitution of the Republic of Indonesia are formulated in Article 4, 15 paragraph (2), 17 paragraph (2). The President's legislative power is found in Article 20 paragraph (2), (4), Article 22 paragraph (1) – (3), Article 5 paragraph (1). The powers of the Head of State of the President are found in Articles 10-15 of the 1945 Constitution of the Republic of Indonesia.

### **Shifts in Pancasila Ideology and Shifts in the Interpretation of Democracy in the Appointment of Acting Substitutes for Regional Heads**

Syamsudin, M., (et.al) argues that Pancasila as the fundamental ideology of the state (state fundamental norm) (Karelina et al., 2022) basically implements democracy. Pancasila democracy contains seven principles of democratic mechanisms, including (1) understanding of a rule of law, (2) constitutionalism, (3) supremacy in the hands of the people based on law, (4) responsible government, (5) government based on representation, (7) not recognizing majority and minority in the interests of the state. Jawahir Thontowi in his analysis of Article 18 paragraph (5) of the 1945 Constitution regarding the election of regional heads, Governors, Regents and Mayors is clearly contrary to the fourth precept (4) of Pancasila. If the phrase "...wisdom, wisdom, and representation.." is a basic value, then indicators of meaning and function for government performance are not necessarily identical with the necessity of full democratic practice as implemented in western countries. Representative democracy as meant by Pancasila values as in the fourth precept is also commonly practiced

in various developed and modern countries (Thontowi, 2016).

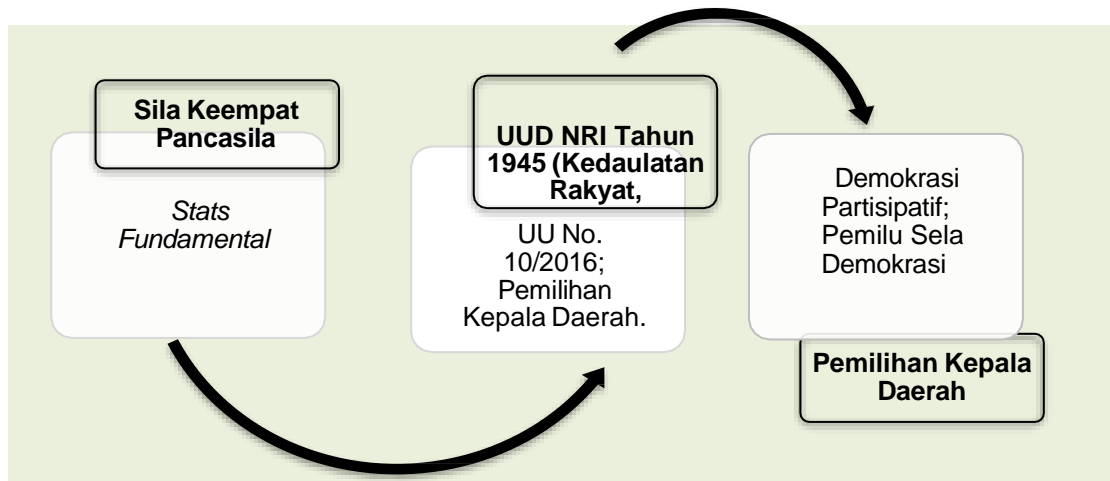
Sebagai idealisme mendasar negara Indonesia, Pancasila menjadi supremasi tertinggi kedaulatan warga negara Indonesia, dan pada akhirnya segala aturan hukum harus tunduk di bawah ketentuan Pancasila. C.F. Strong defined internal sovereignty as the supremacy of a person or body of persons in the state over the individuals or associations of individuals within the area of its jurisdiction, and external sovereignty as the absolute independence of one state as a whole with reference to all other states. The constitution, therefore, defines the limits of the state both internally and externally, and the limits of the state become vital when we consider it in its external relations. External, like internal, sovereignty is in theory unlimited, but in practice it is limited either positively by a desire for peace or some material advantage on the part of the community concerned, or negatively by a fear of the power of some neighbouring state to crush that community. Karenanya Konstitusi harus meliputi kedaulatan internal dari individu warga negara dan kedaulatan eksternal dari suatu negara yang dibatasi oleh kehendak warga negara (Forde, 1992).

The 1945 Constitution of the Republic of Indonesia Article 18 paragraph (4) narrates "Governors, Regents and Mayors respectively as heads of provincial, regency and city regional governments are elected democratically." Clearly the constitutional order describes regional head elections as being carried out through regional elections (pilkada). There has been a shift in ideology and a shift in the interpretation of democracy related to the actions of the executive branch of the President and the Ministry of Home Affairs of the Republic of Indonesia in Article 201A of Law no. 6/2020. This shift in ideology and interpretation of democracy went against the 1945 Constitution of the Republic of Indonesia Article 18 paragraph (4) which led to resistance to the basic ideology of the Pancasila state. The provisions of people's sovereignty adopted by the 1945 Constitution of the Republic of Indonesia have been clearly described by C.F Strong, namely the constitution as a limitation of the internal sovereignty of citizens which has been set forth in Article 18 paragraph (4) to determine the heads of their respective regions through elections.

Thomas Zittel mendeskripsikan demokrasi partisipatif sebagai wujud demokrasi modern. Menurutnya the main focus of participatory theory lies in the critique of the liberal conception of democracy as a competition for political power among responsible elites. The concept of participatory engineering is linked to two core assumptions which form the basis of the following analysis (Pateman 1970; Cook and Morgan 1971; Macpherson 1977; Bachrach and Botwinick 1992). Further more Thomas Zittel defined core of participatory democracy, the first core assumption is that any policy to reform the institutional basis of democracy should be based upon empirical evidence regarding the effects of these reforms on political participation. The second core assumption of the paper is that the theory of participatory democracy provides a useful vantage point from which to consider the effectiveness of participatory engineering from a theoretical perspective. This means that participatory theory can serve as a basis to specify concrete institutional structures suited to stimulating participation, and that it can help link them to the behavioral level of politics in plausible ways (Zittel & Fuchs, 2006) penunjukan Kepala Daerah oleh lembaga eksekutif pada pemilu serentak 2024, tidak memenuhi unsur-unsur kedaulatan rakyat dan demokrasi

partisipatif.

Responding to the aspirations of people's sovereignty and participatory democracy governed by Pancasila and the 1945 Constitution of the Republic of Indonesia, the author initiated the concept of a by-election in the election of Acting Regional Head as a replacement for the 2024 simultaneous elections. Illustration:



**Figure 3.** Philosophical and Juridical Basis of By-Elections and Representative Democracy Through the Legislature

Description: - The Fourth Precept of Pancasila: "People who are led by wisdom in deliberations/representation."

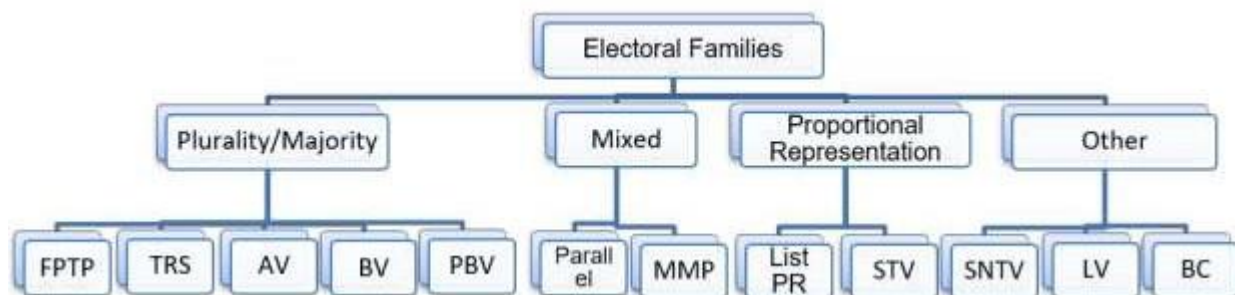
Stats Fundamental Norm: fundamental norms of a country, Indonesian Ideological values: or are ideal norms of the Indonesian nation,

1. The 1945 Constitution of the Republic of Indonesia (Sovereignty of the People, Tricameral, Representative: is a substance mentioned in the 1945 Constitution of the Republic of Indonesia. Tricameral also means Representative is the 1945 Constitution of the Republic of Indonesia which mentions the MPR, DPR, DPRD as legislative bodies, Law No. 10/2016; Election of Regional Heads : the juridical basis of people's sovereignty, tricameral, and representative democracy in the election of regional heads, not through the appointment of executive institutions,
2. Participatory Democracy; By-elections, and Representative Democracy through the DPR/D/DPD: a format that accommodates Pancasila and the 1945 Constitution of the Republic of Indonesia, regional head elections: democratic activities for the people to elect their regional leaders.

### **Mechanism of By-Elections in the Replacement of the Heads of the 2024 Simultaneous General Election Regions**

Korelasi kedaulatan rakyat dan demokrasi partisipatif adalah diturunkan ke teori demokrasi perwakilan dan teori pemilihan umum. Yash Ghai menuturkan after the second world war, there has been considerable distrust of the direct engagement of the people (and doubts about their ability to understand complex issues of the purposes, forms and structure of state power). The response was 'representative democracy'. Now however, more regard is paid to the sovereignty of the people; if sovereignty is indeed vested in and flows from the people (an implication also of the principle of self-determination), it is natural that they should determine how it should be delegated and exercised. The emphasis on popular sovereignty is no doubt a response to the claim to and abuse of sovereign power by numerous governments in recent decades. The framework of representative democracy, hardly fulfill the role of a socializing agent. Instead they point to the importance of functionally defined group relationships in general and the workplace in particular (Ghai, 2006). From this perspective, worker cooperatives are viewed as suitable agents of socialization in democracy because they are characterized by a greater heterogeneity of interests and are perceived to be grounded in the netherworld of daily life, raising real world problems of social cooperation. (Pateman 1970: chapter 3; Bachrach and Botwinick 1992; Warren 1993). There can be little doubt that this system was most successful in the past in securing the quantity and quality of participation at the same time and in balancing conflicting values (Warren, 1993). Implementasi demokrasi perwakilan adalah mekanisme by-election.

Andrew Reynolds, Ben Reilly, Andrew Ellis, (et.al), described there are a large number of different electoral systems currently in use and many more permutations on each form, but for the sake of simplicity we have categorized electoral systems into three broad families: plurality/majority systems, proportional systems, and mixed systems. Within these there are nine 'sub-families': First Past The Post (FPTP), Block Vote (BV), Party Block Vote (PBV), Alternative Vote (AV), and the Two-Round System (TRS) are all plurality/majority systems; List Proportional Representation (List PR) and the Single Transferable Vote (STV) are both proportional systems; and Mixed Member Proportional (MMP) and Parallel systems are both examples of the mixed model. In addition, there are other systems such as the Single Non-Transferable Vote (SNTV), the Limited Vote (LV), and the Borda Count (BC) which do not fit neatly into any particular category and can be regarded as three further sub-families (Reynolds et al., 2008).



**Figure 4.** Election Family

Information:

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- a. Plurality/Majority Systems; In an FPTP system (sometimes known as a plurality
- b. single-member district system) the winner is the candidate with the most votes but not necessarily an absolute majority of the votes. AV and TRS try to ensure that the winning candidate receives an absolute majority. BV is used in multi-member districts. PBV is voters vote for party lists instead of individual candidates;
- c. Mixed Systems; Parallel systems use both a PR element and a plurality/majority (or other) element running independently of each other. Mixed Member Proportional (MMP) systems also use two elements (one of which is a PR system), with the difference that the PR element compensates for any disproportionality arising under the plurality/majority or other system, normally leading to a much more proportional outcome than a Parallel system;
- d. Proportional Representation; List PR is often seen as being best achieved by the use of party lists, where political parties present lists of candidates to the voters on a national or regional basis (see paragraphs 106–108), but preferential voting can work equally well. TV, where voters rank-order candidates in multi-member districts, is another well-established proportional system;
- e. SNTV is a multi-member-district, candidate-centred system in which voters have one vote. LV is very much like SNTV but gives voters more than one vote (however, unlike BV, not as many as there are seats to be filled). BC is a preferential system in single- or multi-member districts.

In Indonesia there are 3 types of elections, namely the election for the DPR, DPD and DPRD, the election for the President and Vice President. The Regional Representative Council (DPD) uses a multi-represented district system. The President and Vice President are directly elected by the people through the Presidential and Vice Presidential election, based on the 1945 Constitution of the Republic of Indonesia and Law no. 1 of 2022 concerning General Elections.

Andrew Reynolds, Ben Reilly, Andrew Ellis, (et.al), said Ukraine for example, abolished mandatory turnout provisions for the 1998 elections after the experience of repeated by-elections failing to reach the required turnout. The Republic of Ireland holds by-elections for vacant seats in the legislature, but Australia does not do so for Senate vacancies. It is also possible to avoid by-elections by electing substitutes at the same time as the ordinary representatives, as is done for example in Bolivia. By-elections are smaller and therefore less costly than normal elections, but in some countries they will nevertheless put a significant burden on the budget, and seats are sometimes left vacant for long periods because of a lack of capacity to arrange by-elections. This is an especially salient problem in some countries in Southern Africa where the HIV/AIDS epidemic often leads to a large number of vacant seats between elections. The post FPTP, TRS, Parallel System, MMP, often need for by-elections as disadvantaged of it.

Pemilu sela diartikan pemilihan umum diantara pemilihan umum utama yang dilakukan

eksekutif karena alasan-alasan tertentu. C.F.Strong wrote in Britain does a Parliament last out its statutory term. For, in time, an Administration begins to lose hold, by-elections go against it, and it recommends a dissolution of Parliament before things get worse. In France they ordered things differently. Under the Third Republic the statutory life of a Parliament in France was four years, and the Constitution allowed for an earlier dissolution by the President with the consent of the Senate. Silvano Moeckli said participation consists of determining the composition of the parliament at fixed intervals and, indirectly, the formation of the government (Finkelberg, 1987). In some states, it might also be possible to vote directly for the country's head of state. In federally organized states, there are additional elections at a lower governmental level. In the throughput stage, which is characterized by political debate about substantive questions, the ordinary citizen has no say (Moeckli, 2006).

The urgency of holding by-elections is empirical problems as mentioned in the background. Vitorio Mantalean and Diamanty Meiliana (Ed.) write their sampling of empirical events as follows:

- a. Two times active Indonesian National Armed Forces (TNI) soldiers were appointed as Acting regional heads. They are 3-star police general Paulus Waterpauw as Acting Governor of West Papua and Brigadier General Andi Chandra As'aduddin, Head of the Central Sulawesi State Intelligence Agency (BIN) as Acting Regent of West Seram, Prov. Moluccas,
- b. Several Acting Regional Heads who initially did not have echelon I qualifications, were tricked by being appointed as expert staff of the Minister of Home Affairs who incidentally were echelon Ib positions. Acting Governor of South Papua Apolo Safanpo and Acting Governor of Central Papua Ribka Haluk admitted the experience was acknowledged by the Minister of Home Affairs Tito Karnavian,
- c. The Act's Lawsuit is described in case No. 422/G/TF/2022/PTUN.JKT. The main points of the case are the plaintiffs including the Association for Elections and Democracy Foundation (Perludem), Executive Director of WALHI Jakarta, Ardhito Harinugroho, and Lilik Sulistyo. The plaintiffs requested that the appointment of 7 governors, 16 mayors, and 65 regents on 12 May-25 November 2022, had the potential for abuse of power and illegal acts by government officials (Moeckli, 2006).
- d. Sania Mashabi and Ardito Ramadhan for Kompas.com revealed the number of regional heads whose term of office ends in 2023 (Mashabi & Ramadhan, 2022):
- e. Against the background of this example of empirical problems, both legal and social, according to the author, there is legal reason to hold by-elections in the 2024 simultaneous elections.

## CONCLUSION

Examining the description and study of the legal materials above, it can be concluded that there are several substances in answering the formulation of the author's problem, namely, the actions of the executive branch of the presidential system in appointing and appointing Acting Interim Replacement (PAW) Regional Heads in the 2024 simultaneous elections, creating a shift in precept ideology to four Pancasila, and a shift in the interpretation

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of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, as well as Law no. 23 of 2014 concerning Regional Government. The fourth principle of Pancasila has determined that the Indonesian state system must comply with the description of the theory of popular sovereignty, the theory of representative democracy, the theory of participatory democracy and the theory of general elections. Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia stipulates that governors/deputy governors, regents/deputy regents, mayors/deputy mayors are elected democratically and not through appointment. Likewise as a *lex specialis*, Law no. 23 of 2014 concerning Regional Government has firmly determined the mechanism for electing regional heads through general elections.

The mechanism for appointing PAW Government Officials in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia in a presidential system, is a by-election which is also implemented in common law countries such as the United States, Singapore, Canada and French civil law countries. By-elections are one of the formats that still accommodates the theory of popular sovereignty, participatory democracy, representative democracy, the tricameral system, Law no. 23 of 2014 concerning Regional Government, as well as PERPU No. 1 of 2022 concerning Amendments to Law No. 7/2022 concerning General Elections.

## BIBLIOGRAPHY

- Achyarsyah, P., & Rani, M. (2021). The Influence of Forensic Accounting and Investigative Auditing on Disclosure of Fraudulent Financial Reporting (Study at the Supreme Audit Agency of the Republic of Indonesia). *AkunNas*, 17(2).
- Black, H. C., & Nolan, J. R. (1969). *Black's law dictionary: definitions of the terms and phrases of American and English jurisprudence, ancient and modern*. West Publishing Company.
- Chandra, M. (2018). *Aspects of Indonesian Child Protection*. Prenada Media.
- Fadilah, F. I., Brata, Y. R., & Katimin, H. (2023). ABUSE OF THE AUTHORITY OF THE VILLAGE HEAD IN THE MANAGEMENT OF RETRIBUTION FUNDS ASSOCIATED WITH THE CRIME OF CORRUPTION. *Case Law: Journal of Law*, 4(2), 101–123.
- Finkelberg, M. (1987). The first song of Demodocus. *Mnemosyne*, 40(Fasc. 1/2), 128–132.
- Forde, S. (1992). Varieties of realism: Thucydides and Machiavelli. *The Journal of Politics*, 54(2), 372–393.
- Ghai, Y. (2006). The role of constituent assemblies in constitution making. *International IDEA. recovered the*, 25, 2008–2017.
- Jurdi, F. (2018). *Introduction to General Election Law*. golden.
- Karelina, N., Abubakar, L., & Handayani, T. (2022). Legal Implications of the Constitutional Court Decision Number 18/Puu/Xvii/2019 and its Affirmation in the Constitutional Court Decision Number 2/Puu-Xix/2021 Against the Execution of Fiduciary Guarantees and Formulation of Agreement Clauses. *ACTA DIURNAL Journal of Notary Law*, 5(2), 187–201. <https://doi.org/10.23920/acta.v5i2.738>
- Mashabi, S., & Ramadhan, A. (2022). *List of Names of 170 Regional Heads Who Will End Their Term of Office in 2023, There are Ridwan Kamil and Ganjar Pranowo*. Compass. [https://regional.compass.com/read/2022/05/11/190726278/registr-name ....](https://regional.compass.com/read/2022/05/11/190726278/registr-name....)
- Mawardi, D., Anwar, S., & Nirmala, A. A. (2023). Presuppositions in the Discourse of Mobile Phone Ads on the Shopee Application in February 2022 and the Implications for Learning in High Schools. *Journal of Tambusai Education*, 7(1), 647–653.
- Moeckli, S. (2006). Direct democracy and political participation from a cross-national perspective. In *Participatory Democracy and Political Participation* (pp. 123–140). Routledge.
- Mufida, S., Timur, F. G. C., & Waluyo, S. D. (2020). The strategy of the Indonesian government in dealing with the Covid-19 outbreak from an economic perspective. *INDEPENDENT: Journal of Indonesian and Global Politics*, 1(2), 121–130.
- Passaglia, P. (2018). Unicameralism, bicameralism, multicameralism: Evolution and trends in Europe. *Perspectives on Federalism*, 10(2), 1–29.

Authority of The Executive Board in Appointing Acting Substitutes for Regional Heads in A Presidential Government System According to the 1945 Constitution of The Republic of Indonesia

- Reynolds, A., Reilly, B., & Ellis, A. (2008). *Electoral system design: The new international IDEA handbook*. International Institute for Democracy and Electoral Assistance.
- Salman, R., & People, D. P. (1945). REPRESENTATIVE BODY STRUCTURE AND CHECKS AND BALANCES IN LEGISLATION FUNCTIONS. *Collection of National Law Study Seminar Papers on Completion of Amendments to the Constitution*.
- Tegnan, H., Simabura, C., & Isra, S. (2018). Indonesian National Development Planning System Based on State Policy Guidelines (GBHN): A Return to the Future? *International Journal of Law Reconstruction*, 2(1), 31–40.
- Thontowi, J. (2016). Pancasila in a Legal Perspective: Views Against the Threat of "The Lost Generation." *UII Press, Yogyakarta*.
- Tuanaya, H. H. (n.d.). *Legal Position Appointment of State Civil Apparatus as Substitute for Regional Heads in Regional Autonomy After Constitutional Court Decision No. 67/Puu-Xix/2021 20 April 2021 Remarks*:
- Warren, M. E. (1993). Can participatory democracy produce better selves? Psychological dimensions of Habermas's discursive model of democracy. *Political Psychology*, 209–234.
- Yadav, M. B. N., Rundun, V., Nthebere, K., Prasad, V., Srinika, S., & Patil, P. L. (2022). Role of Biochar in Improving Soil Fertility in Agricultural Systems: A Review. *Emerging Trends in Agriculture Sciences*, 105.
- Zittel, T., & Fuchs, D. (2006). *Participatory democracy and political participation: can participatory engineering bring citizens back in?* (Vol. 48). Routledge.
- Zuhro, R. S. (2021). Realizing Quality and Integrity 2024 Elections. *FOREWORD*, 2, 71.
- Bachrach, P. and Botwinick, A., (1992). Power and Empowerment. A Radical Theory of Participatory Democracy, Philadelphia: Temple University Press.
- Cook, T.E., and Morgan, P.M., (Eds), (1971). Participatory Democracy, San Francisco, CA: Canfield Press.
- M.A., Henry Campbell Black, (1969). Black's Law Dictionary - Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern, Minnesota: West Publishing Co., Revised Fourth Edition.
- Marijan, Kacung, (2010). Indonesian Political System Consolidating Democracy Post-New Order, Jakarta: Kencana.
- Mawardi, M. Arsyad, (2013). Oversight & Balance between the DPR and the President in

M Said Bakri

the R.I State Administration System. .- Normative, Empirical, Historical, and Comprehensive Juridical Studies, Semarang: RaSAIL Media Group.

M., Syamsudin, Munthoha, Parmono, Kartini, Akhwan, Muzhoffar, Rohiatudin, Budi (et.al.), (2009). Pancasila Education - Placing Pancasila in Islamic and Indonesian Contexts, Yogyakarta: Total Media.

Pateman, C.,(1970). Participation and Democratic Theory, Cambridge: Cambridge University Press.

Reynolds, Andrew, Reilly, Ben, Ellis, Andrew, (et.al), (2008).Electoral System Design: The New International IDEA Handbook, Stockholm: Trydells Tryckeri AB.

Strong, C.F., (1963). A History of Modern Political Constitutions, New York: G.P. Putnam's Sons.

Thontowi, Jawahir, (2016). Pancasila in a Legal Perspective; Views on The Lost Generation's Threats, Yogyakarta: UII Press.

Trisni Andayani, Ayu Febryani, and Dedi Andriansyah, (et.al.), (2020). Introduction to Sociology, Medan: Our Writing Foundation.

Zittel, Thomas, Fuchs, Dieter (Ed.), (2007). Participatory Democracy and Political Participation - Can Participatory Engineering Bring Citizens Back In?, New York: Routledge, First edition.A.A., Henry Campbell Black, (1969). Black's Law Dictionary - Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern, Minnesota: West Publishing Co., Revised Fourth Edition.

Bachrach, P., and Botwinick, A., (1992). Power and Empowerment. A Radical Theory of Participatory Democracy, Philadelphia: Temple University Press.

Cook, T.E., and Morgan, P.M., (Eds), (1971). Participatory Democracy, San Francisco: Canfield Press.

Marijan, Kacung, (2010). Indonesian Political System Consolidating Democracy Post-New Order, Jakarta: Kencana.

Mawardi, M. Arsyad, (2013). Oversight & Balance between the DPR and the President in the R.I State Administration System. .- Normative, Empirical, Historical, and Comprehensive Juridical Studies, Semarang: RaSAIL Media Group.

M., Syamsudin, Munthoha, Parmono, Kartini, Akhwan, Muzhoffar, Rohiatudin, Budi (et.al.),

Authority of The Executive Board in Appointing Acting Substitutes for Regional Heads in A  
Presidential Government System According to the 1945 Constitution of The Republic of  
Indonesia

(2009). Pancasila Education - Placing Pancasila in Islamic and Indonesian Contexts,  
Yogyakarta: Total Media.

Pateman, C.,(1970). Participation and Democratic Theory, Cambridge: Cambridge  
University Press.

Reynolds, Andrew, Reilly, Ben, Ellis, Andrew, (et.al), (2008).Electoral System Design: The  
New International IDEA Handbook, Stockholm: Trydells Tryckeri AB.

Strong, C.F., (1963). A History of Modern Political Constitutions, New York: G.P. Putnam's  
Sons.

Thontowi, Jawahir, (2016). Pancasila in a Legal Perspective; Views on The Lost  
Generation's Threats, Yogyakarta: UII Press.

Trisni Andayani, Ayu Febryani, and Dedi Andriansyah, (et.al.), (2020). Introduction to  
Sociology, Medan: Our Writing Foundation.

Zittel, Thomas, Fuchs, Dieter, (Ed.),(2007). Participatory Democracy and Political  
Participation - Can Participatory Engineering Bring Citizens Back In?, New York:  
Routledge, First edition.

Ghai, Yash , (2017). "The Role of Constituent Assemblies in Constitution Making", IDEA  
(Institute for Democracy and Electoral Assistance),  
[http://www.constitutionnet.org/sites/default/files/2017-  
08/the\\_role\\_of\\_constituent\\_assemblies\\_-\\_final\\_yg\\_-\\_200606.pdf](http://www.constitutionnet.org/sites/default/files/2017-08/the_role_of_constituent_assemblies_-_final_yg_-_200606.pdf).

I-OTDA. "i-OTDA Discusses Extending Term of Office of Regional  
Heads",[https://www.itworks.id/48331/i-otda-kembali-bahas-perpanjangan-masa-  
jabatan-kepala-daerah.html](https://www.itworks.id/48331/i-otda-kembali-bahas-perpanjangan-masa-jabatan-kepala-daerah.html).

Indonesia, Big Dictionary of Languages,<https://kbbi.web.id/jabat>.

Mantalean Vitorio, Meiliana, Diamanty, (Ed.), (2022). "Simsalabim The inauguration of 88  
Acting Regional Heads Leads to Lawsuits for Bung Hatta's Grandchildren to Jokowi  
and the Minister of Home Affairs",  
Kompas.com,[https://nasional.kompas.com/read/2022/12/04/07335241/simsalabim-  
pelantikan-88-pj-kepala-daerah-berujung-gugatan-cucu-bung-hatta](https://nasional.kompas.com/read/2022/12/04/07335241/simsalabim-pelantikan-88-pj-kepala-daerah-berujung-gugatan-cucu-bung-hatta).

Mashabi, Sania, Ramadhan, Ardito, (2022). "List of Names of 170 Regional Heads whose

Term of Office will End in 2023, Ridwan Kamil and Ganjar Pranowo", article, <https://regional.kompas.com/read/2022/05/11/190726278/register-name-170-head-area-which-expired-term-in-2023-ada-ridwan>, Kompas.com

Passaglia, Paolo, (2018). "Unicameralism, Bicameralism, Multicameralism: Evolution and Trends in Europe", in "Perspective in Federalism Volume 10 Issue 2", Italy.

Run with, Steidy. "Problematics of the 2024 Simultaneous Elections and Regulatory Reconstruction" legal article Legal Documentation and Information Network of the North Sulawesi Election Commission, [https://jdih.kpu.go.id/data-provinsi/sulut/data\\_monografi/Artikel%20Hukum\\_Steidy%20Rundengan.pdf](https://jdih.kpu.go.id/data-provinsi/sulut/data_monografi/Artikel%20Hukum_Steidy%20Rundengan.pdf).

Warren, M.E., (1993). "Can Participatory Democracy Produce Better Selves? Psychological Dimensions of Habermas's Discursive Model of Democracy," Political Psychology.

Government Regulation No. 17 of 2020 concerning Amendments to Government Regulation No. 11 of 2017 concerning Management of Civil Servants.

RI Presidential Regulation No. 38 of 2020 on the Types of Positions that Government Officials Can Fill with Employment Agreements.

PAN and RB Regulation No. 15 of 2019 concerning Open and Competitive Filling of Higher Positions in Government Agencies

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