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Reinterpreting Article 18 (4) of the 1945 Constitution: The Election Appointment Dichotomy and the Tension Between Popular Sovereignty and Executive Authority

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ABSTRACT

Employing a normative constitutional and administrative law framework, this study contends that Constitutional Court Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022 misinterpret Article 18(4) of the 1945 Constitution by equating the appointment of acting regional heads with democratic elections, thereby obscuring the fundamental distinction between popular sovereignty and executive authority. This study aims to differentiate the domains of election and appointment, evaluate the Constitutional Court's interpretation, and assess the legitimacy of DPRD involvement in nominating acting regional heads, including in New Autonomous Regions. This study develops a conceptual framework that clearly distinguishes elections and appointments as two separate subsystems for filling regional head positions, while advancing a more coherent constitutional interpretation of their respective domains. This study uses the normative juridical. The study finds that the Constitutional Court blurs the distinction between elections (popular sovereignty) and appointments (executive authority), creating ambiguity in legal domains. This also affects the DPRD's role, which may be misinterpreted as political recruitment despite lacking DPR-equivalent authority. The Court should have clearly defined these boundaries rather than merely recommending implementing regulations.

INTRODUCTION

The policy to hold simultaneous regional elections in 2024 resulted in the shortening of the tenure of officials elected in 2020 to four years, with compensation provided for the remaining period, while officials whose terms ended in 2022–2023 were replaced by acting regional heads until the elections were conducted, thereby disrupting the established five-year rotation of regional leadership. Although this policy framework and its implementation have now formally concluded, this study was undertaken during a period marked by intense public and academic debate concerning the legitimacy, mechanism, and constitutional basis of appointing acting regional heads. The issue remains highly relevant, particularly following Constitutional Court Decision No. 135/PUU-XXII/2024, which introduces a new constitutional dynamic by opening the possibility of filling regional head positions either through appointment or through the extension of the tenure of incumbent officials. This development demonstrates that the question of how regional leadership positions are filled

whether through electoral or non-electoral mechanisms—continues to be a significant constitutional issue within Indonesia's governance system.

Accordingly, this study is both contextual and timely, as it not only reflects the transitional dynamics surrounding the 2024 simultaneous elections but also engages with ongoing constitutional developments that may shape future policies. While a number of previous studies have examined similar themes, none specifically address the issue through the same analytical framework or focus adopted in this research. Therefore, this study offers a distinct contribution by providing a more structured and critical analysis of the differentiation between election and appointment as separate sub-systems, thereby advancing a clearer understanding of constitutional interpretation in this area. If contextualized in limiting the *presidential* term, borrowing Petracca quoted by Peter Stone, presidential term limits ensure rotation in office, which Thomas Jefferson *defined as an obligation on the holder of that office to go out at a certain period*.¹ The Constitutional Court, on the other hand, stated in its decision Number:18/PUU-XX/2022, dated April 20, 2022, paragraph [3.11], that the one-year reduction in the terms of office of the heads and vice heads of provincial, district, and city governments elected in 2020 is not against the principles of legal certainty and justice and does not stop equal opportunity in government as stated in Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution.

The rotation of the head and vice head of the local government is interrupted, opening the opportunity for the president to appoint acting governors/regents/mayors whose legitimacy is given through Law No. 10/2016.² At this point, this situation shows two sub-systems for filling regional head positions: election and appointment. Governors, regents, and mayors are chosen through direct elections, while acting officials are appointed by the President. The latter has sparked controversy, leading to a judicial review of Law No. 10/2016 in the Constitutional Court. Regarding the filling of acting regional heads, according to the Constitutional Court in its decision Number: 67/PUU-XX/2021 dated April 20, 2022, paragraph [3.14.3] and reaffirmed in its decision Number: 15/PUU-XX/2022 dated April 20, 2022, paragraph [3.13.3] stated:

The Constitutional Court must highlight that the appointment of acting regional heads to address vacancies in the position of regional head remains consistent with the definition of "democratically" as outlined in Article 18, paragraph (4) of the 1945 Constitution.

This study analyzes the Constitutional Court's interpretation in the two decisions. The Court viewed "regional head elections" as a general method of filling positions, overlooking that elections are distinct from appointments. By emphasizing "democratically," the Court blurred the lines

¹ Peter Stone, "Theorizing Presidential Rotation," in *The Politics of Presidential Limits*, ed. Alexander Baturo and Robert Elgie, I (Oxford, 2019), 19.

² Article 201 of Law Number 10/2016 on the Election of Governors, Regents, and Mayors.

between election, appointment, and selection, leading to its recommendations to the government as stated in Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022. In its decision Number: 67/PUU-XX/2021 dated April 20, 2022, paragraph [3.14.3] and reaffirmed in its decision Number: 15/PUU-XX/2022 dated April 20, 2022, paragraph [3.13.3] declared:

Consequently, the government must prioritize the issuance of implementing regulations in accordance with Article 201 of Law 10/2016, ensuring that there are quantifiable and transparent mechanisms and requirements that uphold democratic principles while providing the public with assurance that the appointment process is conducted openly, transparently, and accountably, thereby producing competent leaders with integrity who align with regional aspirations and diligently work for the welfare and advancement of the community.

The Constitutional Court's decision allows DPRD's to propose acting regional heads, giving them a new function as recruiters. This study primarily focuses on analyzing the Constitutional Court's decisions in distinguishing the sub-systems of election and appointment as two fundamentally different constitutional and administrative mechanisms for filling regional head positions, grounded respectively in popular sovereignty and executive authority. Within this framework, the role of the Regional People's Representative Council (DPRD) is not treated as the main object of analysis, but rather as a derivative and consequential issue that arises from the Court's interpretation, particularly its allowance for DPRD involvement in proposing acting regional heads. Accordingly, the discussion of DPRD is positioned to critically assess whether such involvement is consistent with its institutional status and authority within Indonesia's unitary state system, without shifting the primary focus away from the constitutional reasoning underpinning the Court's decisions. In Addition, the study in this paper is different from the studies of previous researchers, such as research conducted by Mochammad Tommy Kusuma, et al.³, which requires the appointment of Acting Regional Heads to require DPRD involvement. Gabriel Frans Possenti, Masyur Marung, and Yusuf Muhamad Said stated that the Ministry of Home Affairs immediately implemented the Constitutional Court's consideration No. 15 of 2022 because the Constitutional Court's decision is part of positive law.⁴ Halimah Humayrah Tuanaya said there is a need for the role of DPRD in the appointment of ASN to replace the Regional Head.⁵ This study examines the Constitutional Court decisions Number: 67/PUU-XX/2021 and Number: 15/PUU-XX/2022, which are the basis for the involvement of the DPRD in proposing an

³ Mochammad Tommy Kusuma, Elva Imeldatur Rohmah, and Nafi Mubarak, "Regional Heads Ahead of Elections" *Sosio Justisia Journal*, 2 (2024): 1-33.

⁴ Gabriel Frans Possenti Masyur Marung and Yusuf Muhamad Said, "Analysis of the Appointment of Regional Heads Who Override the Decision of Mk No. 15/Puu-Xx/2022 Can Radicalize the Law," *The Juris* 6, no. 2 (2022): 625–624, <https://doi.org/10.56301/juris.v6i2.650>.

⁵ Halimah Humayrah Tuanaya, "The Legal Position of the Appointment of State Civil Apparatus as Substitutes for Regional Heads in Regional Autonomy After the Constitutional Court Decision NO. 67/PUU-XIX/2021 April 20, 2021," *Rechtsvinding* 11, no. 2 (2022): 229-45.

acting regional head. Thus, there are fundamental differences with the research conducted by previous researchers.

There is a regulatory and conceptual gap between the appointment of acting regional heads in New Autonomous Regions and those appointed due to postponed regional elections, particularly in relation to the involvement of the Regional People's Representative Council (DPRD). In the context of postponed elections, the Constitutional Court's interpretation allows DPRD to propose candidates, implicitly expanding its role toward political recruitment, whereas in New Autonomous Regions such authority is absent. This inconsistency places the DPRD in an ambiguous position: on one hand, it is treated as if it has the capacity to recruit public officials; on the other, it is not institutionally designed to exercise such authority within Indonesia's unitary state system.

This article begins by outlining the concept of filling public office to assess whether the appointment of acting governors, regents, or mayors can be classified as "democratic" under Article 18(4) of the 1945 Constitution, as interpreted in Constitutional Court Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022. Unlike previous studies that generally support DPRD involvement, this study takes a critical stance by questioning the coherence and constitutional basis of such authority. The focus on the DPRD is therefore not incidental but analytical, as its proposed involvement originates directly from the Court's reasoning, making it a crucial entry point to evaluate whether the decisions produce institutional inconsistency and depart from the constitutional design of authority distribution.

The study also examines whether this interpretation extends to the appointment of acting regional heads in New Autonomous Regions (DOB) with particular reference to the recently established regions in Papua, which remain the primary instances of regional expansion under the current moratorium by highlighting three key issues: appointments to fill vacancies prior to the 2024 simultaneous elections, the involvement of the Regional People's Representative Council (DPRD) in the nomination process, and the distinct legal procedures governing appointments in newly formed regions. This focus is not introduced abruptly but is grounded in the earlier discussion of the regulatory and conceptual gap between different appointment regimes, as well as the background explanation concerning transitional governance arrangements and the emergence of acting regional heads. By situating the analysis within these previously established contexts, the study provides a coherent basis for assessing whether the Constitutional Court's interpretation of the term "democratically" under Article 18(4) of the 1945 Constitution can be consistently and appropriately applied to appointments in New Autonomous Regions.

METHODS

This study uses a normative juridical method with statutory and conceptual approaches. The statutory approach analyzes laws on appointing and electing regional heads, including the 1945 Constitution, Law No. 10/2016, and Law No. 5/2014. The conceptual approach examines mechanisms for filling positions through election, selection, and appointment. The two Constitutional Court decisions are positioned as the primary objects of analysis rather than as the conceptual lens of the study. In other words, this research does not use Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022 as a theoretical framework to interpret broader issues; instead, it critically examines these decisions as authoritative legal texts whose reasoning and constitutional interpretations are subject to analysis. The conceptual lens is developed independently, drawing from the theoretical distinction between election as an expression of popular sovereignty and appointment as an exercise of executive administrative authority. This distinction provides the analytical basis for evaluating the coherence, consistency, and constitutional validity of the Court's reasoning in the two decisions. Thus, the study maintains methodological consistency by clearly separating the object of analysis (the Constitutional Court decisions) from the analytical framework (the election–appointment dichotomy).

DISCUSSION

The filling of positions according to Bagir Manan consists of:

- a. Filling an office by *election*;
- b. Filling positions by *appointment*; and
- c. The filling of a position simultaneously involves election and appointment (which functions as a declaration of support).⁶

The system has sub-systems consisting of election, appointment, and selection. The three sub-systems have different procedures. The people in the people's domain carry out elections directly and indirectly through the people's representatives in the legislature to elect their officials. Meanwhile, appointing officials is the government's domain without involving the people or their representatives. Meanwhile, the selection of officials is the domain of the government. By adhering to the system of filling positions and the domain of each sub-system, the demarcation can be separated between the domain of the people and/or the legislature, and the executive.

The Constitutional Court does not classify elections and appointments into distinct subsystems of official appointment mechanisms. The Court appears to interpret the provisions of Article 18(4) of the 1945 Constitution as encompassing the appointment of acting regional heads, thereby giving rise

⁶ Bagir Manan, *Constitutional Theory and Politics*, 1st ed. (Yogyakarta: FH UII Press, 2003), 67.

to a dispute regarding the concept of official appointment.

According to Rahmazani, several references refer to the term acting regional head. The mention varies depending on the cause of the regional head position vacancy. These terms include: Task executor (Plt), Daily executor (Plh), Temporary official (Pjs), and Acting (Pj).⁷ Building on Rahmazani's perspective and relating it to the Constitutional Court's stance in Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022, it can be seen that the Court tends to overlook the underlying causes of vacancies in regional head positions. Instead, the Court emphasizes the principle of public participation, as represented through the Regional People's Representative Council (DPRD). Concurrently, the provisions regarding acting governors, acting regents, and acting mayors, as stipulated in Article 1, points 25, 26, 27, and 28 of Minister of Home Affairs Regulation Number 120 of 2018 amending Minister of Home Affairs Regulation Number 80 of 2015 concerning the Formulation of Regional Legal Products are duly acknowledged, namely:

- a. Daily Executor is an official who carries out the routine duties of a temporarily absent definitive official appointed by a governor decree or regent/mayor decree, and is valid for a maximum of 3 (three) months.
- b. Acting Officials are officials who carry out the routine duties of definitive officials who are permanently absent, appointed by the governor's decree or regent/mayor decree, and are valid for a maximum of 1 (one) year.
- c. Acting is a temporary official role for the governor, regent/mayor, who carries out government duties in certain areas until the inauguration of definitive officials.
- d. A temporary acting official is a senior administrator appointed by the Minister to perform the duties of regional heads and their deputies while they are on leave to join election campaigns.

The four types of acting regional heads have different reasons and regulations:

- a. Acting heads of provincial, regency, and municipal governments who fill vacancies in governor/regent/mayor positions due to elections held in 2024 are included in Article 201 paragraphs (10) and (11) of Law No. 10/2016 on the Election of Governors, Regents, and Mayors;
- b. The appointment of acting governors, regents, or mayors during a leave of absence is regulated in Articles 4–7 of Minister of Home Affairs Regulation No. 74 of 2016, as amended by Regulation No. 1 of 2018 on Leave of Absence for Regional Heads and their Deputies; and
- c. Acting heads of provincial, district, and city governments in New Autonomous Regions are

⁷ Rahmazani, "Problematics of Filling the Position of Acting Regional Head in the Transition Period Before the Election of 2024," *Constitution* 20, no. 2 (n.d.): 196–215, <https://doi.org/https://doi.org/10.31078/jk2022>.

appointed under the respective establishment laws. For example, Article 10(2) of Law No. 16 of 2014 on the Formation of South Buton Regency authorizes the Minister of Home Affairs, on behalf of the President, to appoint an Acting Regent from civil servants recommended by the Governor of Southeast Sulawesi for a maximum term of one year.

Elections fall within electoral law, while appointments belong to administrative law. Article 18(4) of the 1945 Constitution governs only elections, not appointments. However, vacancies may arise not only from delayed elections but also from leave or the creation of New Autonomous Regions, where the central government appoints acting regional heads to ensure continuity and establish governance structures. Against this background, the Constitutional Court's reasoning in Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022 by treating appointments as part of Article 18(4) blurs the conceptual distinction between electoral and administrative subsystems.

The Appointment of an Acting Regional Head does not Fall under the Authority Outlined in Article 18, Paragraph (4), of the 1945 Constitution

The conduct of regional head elections is grounded in Article 18, paragraph (4) of the 1945 Constitution, which affirms that governors, regents, and mayors serving as heads of provincial, regency, and city governments are to be chosen through democratic elections. Titi Anggraini, et al. interpret the phrase "democratically elected" to mean and implement it directly through elections. In this case, elections are also held to fill the positions of regional head and vice regional head.⁸ The provisions in Article 18, paragraph (4) of the 1945 Constitution only pertain to filling positions through elections.

Referring to Benjamin Akzin, who said that the Encyclopaedia of the Social Sciences description reflects common usage regarding election and appointment. "Election" is defined there as "the process of selecting the officers or representatives of an organization or group by the vote of its qualified members. It is to be distinguished from the alternative methods of selection by appointment or by lot." No attempt at all is made to define "appointment"; it is merely described as being of the "essence of executive authority,"...⁹ The election of regional heads is within the scope of popular authority, while the appointment of acting regional heads is within the domain of the government.

According to Titi Anggraini, et al., these articles provide for at least seven public offices filled through elections as expressions of popular sovereignty. These can be grouped into four main

⁸ Fadli Ramadhani Titi Anggraini, et al., *Election Law Codification Study*, ed. Topo Santoso, 1st ed. (Jakarta: Perludem Foundation, 2014), 35.

⁹ Benjamin Akzin, "Election and Appointment," *American Political Science Review* 54, no. 3 (1960): 705–13, <https://doi.org/10.1017/S0003055400122658>.

categories: (1) elections for members of the DPR, DPD, provincial DPRD, and district/city DPRD; (2) presidential and vice-presidential elections; (3) governors and vice governors elections; and (4) elections for regents and vice regents or mayors and vice mayors.¹⁰ Based on the details of the elected officials and their juridical footing, the filling of the acting governor/regent/mayor by appointment is not within the scope of the meaning of "democratically" as stipulated in Article 18 paragraph (4) of the 1945 Constitution which is inscribed in the Constitutional Court's decision.

Technically, according to Benjamin Akzin, an *election* assigns an office or a function to an individual by an act of volition calling for the simultaneous expression of opinion by at least several persons. Conversely, appointment in its technical sense is the assignment of an office or a function to an individual by an act of volition of a single person or, eventually, by a series of consecutive acts of volition of several single persons.¹¹ Adhering to Akzin's opinion, the election of regional heads through Pilkada is the process of assigning a person to carry out the functions of the regional head office for many people (read: voters). Meanwhile, appointing an acting regional head is assigning someone from one person to carry out the tasks of the provincial head, district head, and city head (read: the official authorized to appoint).

The state civil apparatus (ASN) is the government apparatus responsible for determining the procedures and requirements for appointing the interim regional chief, as it is within the government's domain. The ASN regulated in the ASN Law is in the field of administrative law, compatible with the opinion of Peter Cane who said, *when scholars first started writing systematically about administrative law in the mid-twentieth century, the 'province' of administrative law was understood institutionally in terms, primarily, of the organs and agencies of central and local government. In other words, administrative law norms were understood to regulate the conduct of government officials and bodies.*¹² In this sense, the election of a regional head requires popular participation, while the appointment of an acting regional head requires government action in the form of a decree.

In addition, Noah Buckley, Timothy Frye, Guzel Garifullina, and Ora John Reuter said that *recent studies have brought empirical evidence to bear on how the traits of leaders influence outcomes.*¹³ They then cite the opinion of T. Besley and M. Reynal-Querol, who say that more educated state leaders are associated with higher economic growth rates.¹⁴ Noah Buckley, et al. also present the opinions of P. Evans, J. E. Rauch, and B. Geddes, who stated that many *authors find that technocratic*

¹⁰ Titi Anggraini, Ramlan Surbakti, et al., *Election Law Codification Study*.

¹¹ Akzin, "Election and Appointment."

¹² Peter Cane, *Administrative Law*, ed. Paul Craig, 5th ed. (New York: Oxford University Press, 2011), 14.

¹³ Noah Buckley, et al., "The Political Economy of Russian Gubernatorial Election and Appointment," *Europe - Asia Studies* 66, no. 8 (2014): 1213–33, <https://doi.org/10.1080/09668136.2014.941695>.

¹⁴ Buckley, et al. "The Political Economy of Russian"

*bureaucrats generate better governance outcomes than political cronies.*¹⁵ Consideration of the educational aspects and quality of prospective leaders in the regions appointed by the central government is undoubtedly different from leaders the people elect. Ariel R. White, Noah L. Nathan, and Julie K. Faller said that *existing studies of local election officials indicate that they may be similarly influenced by partisanship or ethnicity.*¹⁶ White, Nathan, and Faller further quoted Burden, et al., who stated that the interaction between these officials' partisanship *and their district is associated with aggregate turnout.*¹⁷

The Constitutional Court, as cited by Titi Anggraini, et al., affirmed that regional head elections are part of the electoral regime. Decision No. 72-73/PUU/2004 established that direct elections implement Article 18 of the 1945 Constitution, a view later reinforced by Law No. 22 of 2007, which formally recognized regional head elections as a type of election in Indonesia. Article 1 point 4 of the law defines Regional Head and Vice Regional Head Elections as direct elections conducted to choose regional heads and their deputies within the Unitary State of the Republic of Indonesia, based on the principles of Pancasila and the 1945 Constitution.¹⁸ This means that elections and appointments are different in scope and procedure so that the appointment of acting regional heads is not part of the meaning of "democratically".

The appointment of acting regional heads cannot be interpreted as "democratic" under Article 18(4) of the 1945 Constitution, which pertains to the direct election of governors, regents, and mayors. If the Constitutional Court deems such appointments part of Article 18(4), it should annul Article 201(10) and (11) of Law No. 10/2016. This is in line with the *judicial review* function of the *Constitutional Court*, as stated by James M. West and Dae-Kyu Yoon, the core of the jurisdiction of the Constitutional Court is the power to adjudicate the constitutionality of statutes, in line with Roland Vaubel, who stated that the task of a constitutional court is to ensure compliance with the constitution.¹⁹ According to Jenedri M. Gaffar, the primary function of the Constitutional Court is to assess whether a law is consistent with the Constitution, a process carried out through judicial review. This authority enables the Court to annul any legal provision found to be in conflict with the Constitution. Consequently, all legal products must align with and not contradict constitutional norms. Through this mechanism, the Constitutional Court fulfills its role as the guardian of

¹⁵ Buckley, et al. "The Political Economy of Russian"

¹⁶ Ariel R. White, Noah L. Nathan, and Julie K. Faller, "What Do I Need to Vote? Bureaucratic Discretion and Discrimination by Local Election Officials," *American Political Science Review* 109, no. 1 (2015): 129–42, <https://doi.org/10.1017/S0003055414000562>.

¹⁷ White, Nathan, and Faller. "What Do I Need to Vote?"

¹⁸ Titi Anggraini, *Reorganizing the Election Arrangement* (Jakarta: Perludem, 2011), 3.

¹⁹ Roland Vaubel, "Constitutional Courts as Promoters of Political Centralization: Lessons for the European Court of Justice," *European Journal of Law and Economics* 28, no. 3 (2009): 203–22, <https://doi.org/10.1007/s10657-009-9108-8>.

constitutional compliance in the legislative process²⁰. Instead of recommending the government "to issue implementing regulations as a follow-up to Article 201 of Law 10/2016", the Constitutional Court has found fault with the Constitutional Court for not separating the system of filling positions into three sub-systems, namely election, appointment,, and selection. As a constitutional organ, according to Iwan Satriawan and Khairil Azmin Mochtar, the Court was designed to be the guardian of the constitution and the sole interpreter of the constitution. In conducting its constitutional duty, the Constitutional Court aims to uphold its institutional vision: Upholding the Constitution to realize a state governed by the rule of law and democracy in the light of creating a civilized national life.²¹ The Constitutional Court must clearly distinguish between elections and appointments of regional heads to guide the government and other relevant authorities.

Implications of the Constitutional Court's Decision in Conflating Electoral and Appointment Mechanisms

Following Constitutional Court Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022, the government issued Minister of Home Affairs Regulation No. 4 of 2023 as an implementation of Article 201(10)–(11) of Law No. 10/2016. The regulation allows DPRDs to propose candidates for acting regional heads to reflect the "democratic" principle in Article 18(4) of the 1945 Constitution. However, this authority is problematic as it does not align with the true essence of democratic elections. This is because:

- a. The Regional House of Representatives does not have the function of recruiting public officials as the legislative body (read: DPR) has at the central level. Affan Sulaeman argues that the definition of political recruitment is the selection and appointment of a person or group of people to carry out several roles in the political system in general and the government in particular, the greater the function when the political party is the majority in parliament, so that it has the authority to form the government in a democratic system.²² Due to DPRDs are not legislative bodies equal to the DPR as the central legislative body according to the unitary state system, DPRDs are not given the same authority as the central legislative body (DPR). This is in line with the conclusion of C.F. Strong, who said the two essential qualities of a unitary state may be (1) *the supremacy of the central parliament and*

²⁰ Jenedjri M. Gaffar, "The Position and Function of the Constitutional Court in the State System of the Republic of Indonesia," Research Results, Constitutional Court of the Republic of Indonesia, 2009, 9.

²¹ Iwan Satriawan and Khairil Azmin Mokhtar, "The Role of Indonesian Constitutional Court in Resolving Disputes among the State Organs," *Hasanuddin Law Review* 5, no. 2 (2019): 159–79, <https://doi.org/10.20956/halrev.v5i2.1669>.

²² Sulaeman Affan, "Democracy, Political Parties and Regional Head Elections," *Cosmogov* 1, no. 1 (2015): 12–24, <http://jurnal.unpad.ac.id/cosmogov/article/view/11857/5528>.

(2) *the absence of subsidiary sovereign bodies*.²³ In Enny Nurbaningsih's view, although DPRD's are referred to as regional legislative bodies, the authority of these bodies is only determined by laws formed by the central legislative body.²⁴ Following Strong and Nurbaningsih, granting DPRD's authority to propose acting regional heads is conceptually problematic. Such authority must be grounded in law, not merely in ministerial regulation. Furthermore, according to Sadu Wasistiono, DPRD's generally have four functions: drafting local regulations (which used to be called the legislative function), the budget function, the political oversight function, and the representation of the local community.²⁵ Thus, involving DPRD's in proposing acting regional heads lacks a clear conceptual basis.

- b. DPRD's lack clear standards to evaluate senior civil servants, as their oversight is limited to regional heads' accountability reports. Granting them authority to nominate acting regional heads outside their hierarchy risks enabling transactional practices due to the absence of proper assessment mechanisms. Such implications result from the absence of benchmarks and standards for assessing the performance and competence of DPRD candidates for acting regional heads.
- c. Granting DPRD's the authority to propose acting regional heads is inconsistent with their supervisory function under Article 153(1) of Law No. 23/2014, which focuses on overseeing local regulations and policy implementation. As Sadu Wasistiono notes, DPRD supervision is political and policy-based, not technical. If there is a technical problem, it needs to be raised at the political and policy level, among others, through RDP (Hearing Meeting), which provides political and policy recommendations.²⁶ Authorizing DPRD's to propose acting regional heads through the Permendagri contradicts their function in a unitary state. This authority appears merely political, aimed at easing public criticism, since appointments remain under government control. DPRD involvement is anomalous, as it interferes with the governor's and Minister of Home Affairs' attributive powers, while DPRD's themselves are local government organs, not government bodies.

According to Mokhammad Abdul Aziz, to accelerate the transformation process towards democracy in the regions, several things must be done, including strengthening the representative system, improving the ability of local governments, and fostering a supportive political culture and

²³ C. F. Strong, *Modern Potical Constitutions An Introduction to the Comparative Study of Their History and Existing Form*, 12th ed. (London: The English Language Book Society and Sidgwick & Jackson Limited, 1966), 84.

²⁴ Enny Nurbaningsih, "Various Forms of Regional Policy Supervision in the Era of Broad Autonomy," *Mimbar Hukum - Faculty of Law, Universitas Gadjah Mada* 23, no. 1 (2011): 168–90, <https://doi.org/10.22146/jmh.16197>.

²⁵ Sadu Wasistiono, "A Model for Measuring DPRD Performance Accountability in the Context of Good Governance," *Journal of Government Science Widya Praja* 45, no. 2 (2019): 113–26, <https://doi.org/10.33701/jipwp.v45i2.787>.

²⁶ Wasistiono. "A Model for Measuring DPRD Performance"

civil society.²⁷ Maintaining the DPRD does not confer authority to propose acting regional heads; such a role instead risks exceeding its institutional functions. Democratic quality is better reflected through public participation in elections, including DPRD elections. Moreover, the appointment of acting regional heads is juridical rather than political, as its requirements are strictly regulated by law. Involving DPRDs in proposing candidates blurs this administrative nature and risks encroaching upon executive authority, contrary to the limited functions assigned to DPRDs under Law No. 23/2014.

Another case is if the vacant regional head position is not determined limitatively in Law No. 10/2016. The acting head who fills it can be from civil servants or the community, who can also submit candidates through the DPRD. Therefore, the Constitutional Court's consideration in decision number 4 is relevant and in line with Gui Bonsiepe's opinion on democracy. Bonsiepe said that the term "democracy" in the sense of participation, so that dominated citizens transform themselves into subjects, opening a space for self-determination, and that means ensuring room for a project of one's own accord.²⁸ Such participation of the people is a manifestation of the people's political rights guaranteed in a democratic state. Raymond D. Gastil, quoted by Robert J. Barro, said that political rights are the right to participate meaningfully in the political process. In a democracy, this means the right of all adults to vote and compete for public office, and for elected representatives to have a decisive vote on public policies.²⁹ Law No. 10/2016 does not open up space for people's participation as a channel for political rights through the DPRD in the appointment of acting regional heads, because it is realized that the appointment of the heads of provincial, district and city governments cannot be equated with their election, which has been determined by procedures through regional elections under Article 18 paragraph (4) of the 1945 Constitution.

Collaboration between the acting Regional Head/definitive Regional Head and the DPRD, supported by the support of the majority of the people, will create a better democratic atmosphere in the region. At the same time, it also strengthens the legitimacy of the acting/definitive head in organizing local government affairs with the DPRD as their partner. Leonardo Morlino *said* that a good democracy can be said to present a stable institutional structure that realizes the liberty and equality of citizens through the legitimate and correct functioning of its institutions and mechanisms.³⁰ Furthermore, Morlino explained that when institutions have full backing from *civil*

²⁷ Mokhamad Abdul, Aziz 1, and Article Info Abstract, "Politik Indonesia Indonesian Political Science Review Simultaneous Regional Elections through DPRDs: An Idea for Realizing Democratic Elections from the Perspective of Pancasila and the 1945 Constitution," *Politik Indonesia: Indonesian Political Science Review* 1, no. 2 (2016): 154-70, <http://journal.unnes.ac.id/nju/index.php/JPI>.

²⁸ Gui Bonsiepe, "Design and Democracy," <http://www.jstor.org/action/showpublisher?publishercode=mitpress> 22, no. 2 (2006): 27-34, <http://www.jstor.org/stable/25224045>.

²⁹ Robert J. Barro, "Determinants of Democracy," *Journal of Political Economy* 107, no. 6 PART 2 (1999), <https://doi.org/10.1086/250107>.

³⁰ Leonardo Morlino, "What Is a 'Good' Democracy?," *Democratization* 11, no. 5 (2004): 10-32, <https://doi.org/10.1080/13510340412331304589>.

society, they can pursue the values of the democratic regime. If, in contrast, the institutions must postpone their objectives and expend energy and resources to consolidate and maintain their legitimacy, then crossing over even the minimum threshold for democracy becomes a remarkable feat. *Second*, a good democracy is one in which the citizens, associations, and communities in which it is composed enjoy at least a moderate level of liberty and equality (quality in terms of content). *Third*, in a good democracy, the citizens have the power to check and evaluate whether the government pursues the objectives of liberty and equality according to the rule of law.³¹ Acting regional heads appointed by the president have indeed been taken into account for their ability to run the government democratically through the involvement of the people or stakeholders in policy formulation as a manifestation of democracy to achieve good governance. This includes his competence, capacity, achievements during high-ranking or middle-ranking positions, and ability and expertise in collaborating with the DPRD.

The appointment of acting regional heads constitutes a subsystem distinct from elections. As holders of presidential mandates, they serve without fixed terms and may be replaced if necessary, with ultimate authority resting with the President, while DPRD has no role in proposing candidates. DPRD is limited to handling mid-term electoral replacements, whereas appointments are executive actions involving eligible civil servants. However, the Constitutional Court's reasoning in Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022 tends to expand DPRD involvement by conflating appointment and electoral subsystems. This is problematic, as vacancies in regional leadership arise not only from the postponement of the 2024 elections but also from other conditions, such as leave of office or the establishment of new autonomous regions.

Related to the Constitutional Court decision No. 37/PUU-XX/2022 dated July 7, 2022, paragraph [3.16] which states:

In its Decisions No. 67/PUU-XIX/2021, No. 15/PUU-XX/2022, and No. 18/PUU-XX/2022, the Constitutional Court emphasized that the appointment of acting regional heads during the transition to the 2024 elections must be governed by clear, measurable, and transparent regulations issued by the government. These fundamental considerations include: 1....; 2....; 3..... 4. *The filling of the acting head does not ignore (pay attention to) the principles of democracy and the filling takes place in an open, transparent, and accountable manner*; 5...; 6....; 7...; 8. *The acting regional head must be able to cooperate with the Regional House of Representatives*; and 9.....

The analysis focuses on paragraphs 4 and 8, as they are central to this study. The Court's reliance on paragraph 4 to justify DPRD involvement in proposing acting regional heads is misplaced,

³¹ Morlino. "What Is a 'Good' Democracy?,"

as it conflates appointments with democratic principles. In fact, such appointments are administrative actions implementing Article 201(10)–(11) of Law No. 10/2016, which has already undergone democratic deliberation in the DPR.

The Court's view that acting regional heads must collaborate with DPRD's does not justify DPRD involvement in their nomination. Such collaboration is inherent in governance, regardless of how the acting head is selected. These two local government organs are designed to act as the organizers of local government.³² Likewise, the acting heads of provincial, district, and city governments who carry out the duties and obligations of their daily positions must cooperate with the DPRD. Without cooperation with the DPRD, it will affect the running of the regional government headed by the acting head. Thus, acting heads of provincial, district, and city governments who the president appoints outside the proposal of local legislative organs or from the proposal of the DPRD must still cooperate with the DPRD. Thus, the Constitutional Court's consideration in paragraph 8 cannot be used as a basis for the DPRD to be authorized to propose acting heads of regions.

Implications of the Constitutional Court's Decision on the Appointment of Acting Regional Heads in Newly Established Autonomous Regions

The appointment of acting regional heads applies not only to 2024 election related vacancies but also to New Autonomous Regions (DOBs). Although similar in purpose, DOB appointments differ in scope. Constitutional Court Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022 do not apply to DOBs, as they are limited to implementing Article 201(10)–(11) of Law No. 10/2016 and are not *erga omnes*. Meanwhile, for Maruarar Siahaan, in a footnote, the term *erga omnes* (Latin: *concerning everyone*) in a decision is often used in the legal world to explain a right or obligation that is generally binding and can be enforced if there is a violation by everyone of the right. The nature of the validity of *erga omnes* is different from a contract or agreement that contains a right that is only binding on the parties (*inter partes*).³³ Attributed to the Constitutional Court's decision, borrowing Syukri Asy'ari, Meyrinda Rahmawaty Hilipito, and Mohammad Mahrus Ali, the decision handed down by the Constitutional Court in the judicial review of the law varies greatly, ranging from granted, partially granted, rejected, to unacceptable. There are even some new developments in the Constitutional Court's decision as its *ijtihad* to uphold law and justice. Furthermore, they asserted that the decision is inseparable from the principle of *erga omnes*, which carries legal binding force applicable to all

³² See Article 1 number 3 and number 4 of Law No. 23 Year 2014.

³³ Maruarar Siahaan, "(Journal of Constitutional Court Judges) The Constitutional Court in Enforcing Constitutional Law 3855-5503-1-PB," *Hukum* 16, no. 3 (2009): 356-78.

elements of the nation, thereby requiring all parties to comply with and respect the ruling.³⁴

Although the Constitutional Court's decision is characterized as *final and binding*,³⁵ which reflects the principle of *erga omnes*, so that, according to Fadzlun Budi Sulisty Nugroho, to the parties who are *adressat*, all state institutions, state administrators, and all citizens related to the decision must obey and implement it, according to Safrina Fauziyah as cited by Budi Suhariyanto also argues, in principle the Constitutional Court's decision is said to be a *negative legislator* that is *erga omnes* (meaning that the decision is binding for all citizens, so it is not only binding for the parties to the case).³⁶ However, the appointment of an acting regional head for DOB is not binding on the government because the DOB Law itself regulates the appointment of the acting head. The object of testing different laws certainly has consequences for the Constitutional Court's decision, which cannot be applied *erga omnes* because the appointment of acting regional heads is not regulated in one law. Although they have the same thing as acting regional heads, they are different because of the filling of their positions and the laws that accommodate and legitimize them. Bagir Manan's opinion on *erga omnes* is presented to strengthen the author's argument. He opined that if a statutory regulation is declared invalid by the Supreme Court because it contradicts a higher statutory regulation, the statutory regulation becomes null and void and invalid to bind everyone.³⁷ What was tested by the Constitutional Court was Law No. 10 of 2016, not the law on the establishment of DOBs, so the acting regional heads appointed for DOBs are not subject to the implementing regulations of Article 201 paragraphs (10) and (11) of Law No. 10 of 2016 as recommended by the Constitutional Court.

Dian Ayu Widya Ningrum, et al., said that one form of constitutional law enforcement carried out by the Constitutional Court in *judicial review* cases is through decisions that are not only fixated on a law but on a particular condition to achieve justice. Therefore, the Constitutional Court requires the principle of *erga omnes*, which guarantees compliance for all *adressat*. Compliance with the Constitutional Court's decision also shows that its decision is final and non-negotiable, so that all Constitutional Court decisions contain legal certainty.³⁸ Consistent with the view of Fadzlun Budi

³⁴ Asy'ari, Syukri, Meyrinda Rahmawaty Hilipito, and Mohammad Mahrus Ali. "Model dan Implementasi Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang (Studi Putusan Tahun 2003-2012)." *Jurnal Konstitusi* 10, no. 4 (2016): 675. <https://doi.org/10.31078/jk1046>.

³⁵ Article 10 paragraph (1) following the explanation of Law No. 8 of 2011 concerning Amendments to Law No. 24 of 2003 concerning the Constitutional Court, "The decision of the Constitutional Court is final, that is, the decision of the Constitutional Court immediately obtains legal force since it is pronounced and no legal remedies can be taken. The final nature of the decision of the Constitutional Court in this Law also includes binding legal force (final and binding)".

³⁶ Budi Suhariyanto, "The Issue of the Executability of Constitutional Court Decisions by the Supreme Court," *Jurnal Konstitusi* 13, no. 1 (2016): 171, <https://doi.org/10.31078/jk1318>.

³⁷ S.F. Marbun, *Administrative Justice and Administrative Remedies in Indonesia*, 2nd ed. (Yogyakarta: UII Press, 2003), 169.

³⁸ Dian Ayu Widya Ningrum, Al Khanif Al Khanif, and Antikowati Antikowati, "The Ideal Format of Follow-up to Constitutional Court Decisions to Effect the Erga Omnes Principle," *Constitutional Journal* 19, no. 2 (2022): 314, <https://doi.org/10.31078/jk1924>.

Sulistyo Nugroho, this affirms the application of the *erga omnes* principle to Constitutional Court decisions, as such rulings are not limited to binding only the disputing parties (*inter partes*), but are universally binding and must be observed by all. This principle is reflected in the provision stipulating that Constitutional Court decisions are immediately enforceable without the need for further authorization, unless otherwise regulated by law.³⁹ In reference to both legal opinions and Constitutional Court Decisions Number 67/PUU-XX/2021 and Number 15/PUU-XX/2022 dated April 20, 2022, the Government subsequently took responsive action by enacting Minister of Home Affairs Regulation Number 4 of 2023 concerning the Appointment of Acting Governors, Regents, and Mayors. In the consideration in letter b of the regulation, the Constitutional Court Decision Number: 15/PUU-XX/2022 is included as a philosophical consideration. Adhering to this philosophical consideration, the Permendagri *a quo* does not regulate the mechanism for proposing acting regional heads for DOBs.

The appointment subsystem, on the other hand, is inherently linked to administrative actions that demand immediacy in filling vacant positions. However, the act of appointing officials to fill regional head vacancies under certain conditions has become increasingly unclear following the Constitutional Court's interpretation of Article 18 paragraph (4) through decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022. As a result, the implications extend beyond vacancies caused by the postponement of regional elections and also affect the appointment of acting regional heads in newly established autonomous regions.

CONCLUSION

This study has demonstrated, through a normative and conceptual analysis of Constitutional Court Decisions No. 67/PUU-XX/2021 and No. 15/PUU-XX/2022, that the Court's reasoning tends to conflate two distinct constitutional mechanisms for filling regional head positions, namely elections and appointments. By interpreting the term "democratically" in Article 18 paragraph (4) of the 1945 Constitution to include the appointment of acting regional heads, the Court extends the meaning of democratic legitimacy beyond its original electoral context. The analysis shows that this interpretation lacks conceptual consistency, as elections derive from popular sovereignty, whereas appointments are rooted in executive administrative authority. Furthermore, the study finds that the Court's reasoning has practical implications, particularly in legitimizing the involvement of the Regional People's Representative Council (DPRD) in proposing candidates for acting regional heads. This involvement, as examined in the Discussion, is not grounded in the DPRD's institutional function within Indonesia's unitary state system and creates ambiguity in its role, especially when contrasted

³⁹ Nugroho, "The Applicability of the Erga Omnes Principle and the Implementation of the Constitutional Court Decision."

with the absence of such authority in New Autonomous Regions (DOB). This inconsistency reflects a broader lack of coherence in the application of legal principles governing appointment mechanisms.

Based on these findings, this study underscores the need for a clearer constitutional delineation between election and appointment as separate sub-systems. Such differentiation is essential to ensure consistency in legal interpretation and to prevent the expansion of institutional roles beyond their constitutional design. In this regard, the study contributes by developing a more structured analytical framework that reaffirms the distinction between democratic legitimacy and administrative authority, thereby offering a more coherent basis for evaluating future constitutional interpretations and regulatory policies concerning the filling of regional head positions.

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