

Literature Study on the Appointment of Acting Regional Heads from Active Indonesian National Army (TNI) Elements in Regional Autonomy Perspective

Febriasty¹, Hernadi Affandi², Inna Junaenah³

Faculty of Law, Universitas Padjadjaran

Email: febriasty23001@mail.unpad.ac.id

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Abstract : *This research is a literature study that analyzes the construction of regional autonomy perspectives in the appointment of Acting Regional Heads from the active Indonesian National Army (TNI) based on various academic studies. with various studies among academics. The appointment of acting regional heads from the military raises fundamental questions regarding its consistency with the principles of regional autonomy, merit systems, and local democracy. The main focus of this research is to examine: This research is a literature study that analyzes the construction of regional autonomy perspectives in the appointment of Acting Regional Heads from the active Indonesian National Army (TNI) based on various academic studies. with various studies among academics. The appointment of acting regional heads from the military raises fundamental questions regarding its consistency with the principles of regional autonomy, merit systems, and local democracy. The main focus of this research is to examine: First, How is the construction of regional autonomy perspectives in various studies regarding the appointment of Acting Regional Heads from active TNI elements before the enactment of Permendagri No.4 of 2023? Second, What is the regulatory basis that can be corrected for the appointment of Acting Regional Heads from active TNI elements in the perspective of regional autonomy?. This research uses normative juridical methods and uses secondary data from library materials. The approaches used in this research are legislative approach and conceptual approach. This research concludes: First, the dominance of the perspective stating that the practice of appointing Acting Regional Heads from among the active TNI tends to conflict with local democracy. Second, a more assertive regulatory reformulation is needed in limiting the appointment of Acting Regional Heads from the active TNI and strengthening mechanisms of transparency, accountability, and DPRD participation in the selection process.*

Keywords : *Acting Regional Head, Active Military, Regional Autonomy*

Abstrak : Penelitian ini merupakan studi literatur yang menganalisis konstruksi perspektif otonomi daerah dalam pengangkatan Penjabat Kepala Daerah dari unsur Tentara Nasional Indonesia (TNI) aktif berdasarkan berbagai kajian akademis. Pengangkatan Penjabat Kepala Daerah dari kalangan TNI aktif menimbulkan pertanyaan mendasar mengenai konsistensinya dengan prinsip-prinsip otonomi daerah, sistem merit, dan demokrasi lokal. Fokus utama penelitian ini adalah mengkaji: *Pertama*, Bagaimana konstruksi perspektif otonomi daerah pada berbagai studi mengenai pengangkatan Penjabat Kepala Daerah dari unsur TNI aktif sebelum berlakunya Permendagri No.4 Tahun 2023?. *Kedua*, Seperti apa landasan pengaturan yang dapat dikoreksi terhadap pengangkatan Penjabat Kepala Daerah dari unsur TNI aktif dalam perspektif otonomi daerah?. Penelitian ini menggunakan



metode yuridis normatif dan menggunakan data sekunder dari bahan kepustakaan. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan perundang-undangan dan pendekatan konseptual. Penelitian ini menyimpulkan: *Pertama*, artikel terdahulu di dominasi dengan perspektif yang menyatakan bahwa praktik pengangkatan Penjabat Kepala Daerah dari kalangan TNI aktif cenderung bertentangan dengan demokrasi lokal. *Kedua*, diperlukan reformulasi regulasi yang lebih tegas dalam membatasi pengangkatan Penjabat Kepala Daerah dari unsur TNI aktif serta memperkuat mekanisme transparansi, akuntabilitas, dan partisipasi DPRD dalam proses seleksi.

Kata kunci : Penjabat Kepala Daerah, TNI Aktif, Otonomi Daerah

I. INTRODUCTION

Literature study or review has a meaning that is not merely an activity of reading literature, but rather leads to a comprehensive evaluation of previous research on a particular study topic and then summarizes, analyzes, and synthesizes its contents and then presents it in written format.¹ Literature study is an explanation of theory, research findings, and other research materials obtained from reference sources. Literature study is a description of theory, findings, and other research materials obtained from reference materials collected from reference sources as a basis for conducting comprehensive and analytical research studies on previous studies in the field of certain topics.² In this article, a literature study was conducted on studies that raised the issue of appointing Acting Regional Heads from active Indonesian National Army (TNI) elements.

The term acting official refers to the position of administrative official, namely a person appointed in government service who is assigned duties and authority to carry out the work of Regional Head in the executive scope temporarily.³ The mechanism and requirements for appointing Acting Regional Heads became public scrutiny when the Minister of Home Affairs appointed Andi Chandra As'aduddin as Acting Regent of West Seram in 2022. At the time of his appointment, Andi Chandra As'aduddin was still active as a TNI soldier with the rank of Brigadier General and previously served as Head of the State Intelligence Agency (BIN) Central Sulawesi.⁴ The appointment of Andi Chandra As'aduddin invited various studies among academics which can be seen through various journal articles.

The mechanism for appointing Acting Regional Heads must certainly remain in line with democratic principles in regional autonomy. Regional autonomy is a concrete manifestation of democracy at the local level because it gives authority to Regional Governments to regulate and manage government affairs, development, and regional

¹ Aryana, "Studi Literatur: Analisis Penerapan Dan Pengembangan Penilaian Autentik Kurikulum 2013 Pada Jurnal Nasional Dan Internasional", (2021), hlm. 368, <http://pps.unnes.ac.id/prodi/prosiding-pascasarjana-unnes/>.

² Martyn Shuttleworth, "What Is a Literature Review?," (2009), <https://explorable.com/what-is-a-literature-reMartyn-Shuttleworth.view>.

³ Mhd TaufiqurMhd Taufiqurrahman, "Kedudukan Diskresi Pejabat Pemerintahan," *Jurnal Retentum*, Volume 1 No.1, Agustus (2019), hlm. 55.

⁴ Fitri Chusna, "Deretan Pj Kepala Daerah Yang Berstatus Polri/TNI Aktif," Kompas.com, 2022, <https://nasional.kompas.com/read/2022/05/26/08105451/deretan-pj-kepala-daerah-yang-berstatus-polri-tni-aktif?page=all>.

community welfare. According to Bagir Manan, regional autonomy is a form of regional independence to organize and manage its internal regional interests with the principle of the widest possible.⁵ Autonomy is an important stake in the future integrity of the Unitary State of the Republic of Indonesia. Successful autonomy will become the adhesive of the unitary state. But if it fails, autonomy will become a trigger for disintegration. Thus autonomy is not just a government mechanism to realize effective and efficient state administration. Moreover, it is also one of the front guards of the unitary state guard.⁶

The novelty of this article is by examining various previous articles that have various perspectives on the appointment of Acting Regional Heads from active TNI elements so that they can map the various perspectives that have existed. Based on the explanation above, the Author conducts literature study research with problem formulations, *First*, How is the construction of regional autonomy perspectives in various studies regarding the appointment of Acting Regional Heads from active TNI elements before the enactment of Ministry of Home Affairs Regulation No.4 of 2023? *Second*, What is the regulatory basis that can be corrected for the appointment of Acting Regional Heads from active TNI elements in the perspective of regional autonomy?

II. RESEARCH METHODOLOGY

This research uses normative juridical methods or is called doctrinal legal research.⁷ The research was conducted using the statutory approach (*statute approach*) and conceptual approach (*conceptual approach*). The statutory approach is an approach used to examine and analyze various laws and regulations related to the legal issues to be studied.⁸ The conceptual approach, which departs from the views and doctrines that develop in legal science.⁹ The data source used is secondary data, namely obtained from library materials or literature that has a relationship with the research object.¹⁰

III. DISCUSSION

A. Construction of Regional Autonomy Perspectives in Various Studies Regarding the Appointment of Acting Regional Heads from Active TNI Elements

Based on the categorization results that have been carried out, the Author filters various previous journals that are relevant to the study topic. From a number of journals that were successfully collected, 10 (ten) journals were selected which were then analyzed in depth because they were considered most suitable for the focus and needs of the research. The selection of these journals is based on their relevance to the issue of

⁵ Bagir Manan, *Hubungan Antara Pusat Dan Daerah Menurut UUD 1945*, Jakarta: Sinar Harapan, (1994), hlm. 20.

⁶ Bagir Manan, *Menyongsong Fajar Otonomi Daerah*, Yogyakarta: Pusat Studi Hukum, Fakultas Hukum Universitas Islam Indonesia, (2004), hlm.vi-vii.

⁷ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri*, Jakarta: Gaha Indonesia, (1990), hlm.11.

⁸ Erlies Septiana Nurbaini Salim HS, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*, Depok: RajaGrafindo, (2013), hlm.1.

⁹ *Ibid.*

¹⁰ *Ibid*, hlm 15.

appointing Acting Regional Heads originating from active TNI elements. This literature study not only functions as a theoretical foundation but also observes the extent to which the issues raised have developed and been discussed in academic literature.

First discussion sees that there are still problems that arise in the simultaneous Regional Head Elections in 2014, namely the absence of Government Regulations (PP) as implementing regulations of Article 201 of Law No. 10 of 2016 which causes agreement and disagreement with various interpretations. Next is the difference in views on the legal basis for appointing active TNI as Acting Regional Heads, some parties argue that it contradicts the TNI Law and ASN Law, but some parties argue that this is allowed if active TNI members have served in High Leadership Positions (JPT Madya) or High Leadership Positions (JPT Pratama) outside the TNI organization.¹¹

The theory used is the theory of constitutionalism as a concept of constitutional thinking regarding the mechanism of limiting government power through the preparation of a constitution, both in written and unwritten forms. The research findings show that, *First*, the appointment of Acting Regional Heads carried out by the Government in the 2024 Regional Head Elections from the formal juridical aspect has met the provisions of Article 201 paragraphs (10) and (11) of Law No.10 of 2016. However, from a material and substantial perspective, the appointment of Acting Regional Heads violates the principles of constitutionalism, especially the principle of rule of law and regional independence. *Second*, the appointment of active TNI personnel to High Leadership Positions (JPT Madya) and (JPT Pratama) as Acting Regional Heads is a violation and is not in line with Law No. 34 of 2004 concerning TNI, Law No. 2 of 2002 concerning the Indonesian National Police, Law No. 5 of 2014 concerning ASN and Constitutional Court Decision Number 15/PUU-XX/2022.¹²

Second discussion, the simultaneous Regional Head Elections in 2024 caused many vacancies in Regional Head positions that ended their terms of office, so as a consequence of the public service aspects that must continue to run, the solution used by the Central Government is the appointment of Acting Regional Heads. However, what becomes a problem is the presence of active TNI-Police elements appointed as Acting Regional Heads as happened in Central Sulawesi Province and also occurred in 2018 in West Java Province. The appointment is a discretionary action that violates the law and is not done for the public interest.¹³

The theory used is the theory of discretion or free authority, namely a condition where state administrative apparatus or institutions have room to move to act without being absolutely bound by applicable legal provisions. The study findings reveal that the appointment of Acting Regional Heads from active TNI-Police circles in carrying out community service functions has not fully followed the basic principles of governance. The process of appointing Acting Regional Heads is a manifestation of administrative

¹¹ Juanda & Ogiandhafiz Juanda, "Pengangkatan Penjabat Kepala Daerah Menghadapi Pilkada Serentak 2024 Dalam Perspektif Hukum Tata Negara," *Jurnal Keamanan Nasional*, Volume VII, (Juli 2022).

¹² *Ibid*.

¹³ Raihan Ardiansyah, Waluyo, Rosita Candrakirana ., "DISKRESI DALAM PENGANGKATAN PENJABAT KEPALA DAERAH DARI UNSUR TNI/POLRI", *Eksekusi: Jurnal Ilmu Hukum dan Administrasi Negara*, Vol.1, No.3, (2023).

freedom that arises due to governance deviations. Consequently, the authority and position obtained by Acting Regional Heads contains power distortion and potentially sidelines democratic values in the implementation of regional government.¹⁴

Third discussion, the issuance of Ministry of Home Affairs Regulation Number 4 of 2023 regarding Acting Governor, Regent and Mayor is a technical provision for filling the position of Acting Regional Head. In Article 3 letter (b) of Ministry of Home Affairs Regulation Number 4 of 2023, there is a provision that states: "those who can become Acting Regional Head are those from ASN officials or officials in certain ASN positions who occupy High Leadership Positions Madya and High Leadership Positions Pratama in the Central Government or Regional Government environment." However, the government seems to interpret these provisions extensively which then becomes a gap and opportunity for the Minister of Home Affairs to appoint active TNI personnel as Acting Officials. This condition causes Ministry of Home Affairs Regulation Number 4 of 2023 to potentially contradict higher-ranking regulations, namely the Regional Head Election Law and the ASN Law.¹⁵

The theory used is the theory of principles of legal regulation preparation, which functions as a reference and parameter for creating quality legal products. The study findings indicate that individuals worthy of being appointed as Acting Governor, Acting Regent, and Acting Mayor are State Civil Apparatus who hold positions at the echelon of High Leadership Positions at the Madya and Pratama levels, both serving in central and regional government environments. Thus, the procedure for appointing Acting Regional Heads needs to refer to the provisions of Article 18 paragraph (4) of the 1945 Constitution. In this case, the candidacy process and discussion of acting candidates is carried out through the Regional People's Representative Council forum through plenary sessions. The DPRD then submits two candidate names to the Minister of Home Affairs to be subsequently submitted to the President to be designated as Acting Regional Head.¹⁶

Fourth discussion, the mechanism for filling Acting Regional Head positions ahead of the 2024 elections raises problems for the prospects of democracy and constitutionalism through the appointment of Acting Regional Heads who serve for quite a long period and indicates that the Central Government has eroded the constitutional rights of regional communities. The design of appointing Acting Regional Heads is *mutatis mutandis* implemented based on urgent emergency conditions. The appointment of Acting Regional Heads in the context of synchronizing the uniformity of the 2024 Regional Head Election time raises various issues and concerns among the community. One of the main problems that is a public concern is the appointment of active TNI-Police Officers as Acting Regional Heads. This step is seen as an attempt to restore TNI-Police involvement in the civilian political sphere.¹⁷

¹⁴ *Ibid.*

¹⁵ Egip Satria Eka Putra, Khairul Fahmi, and Hengki Andora, "Pengangkatan Anggota Tentara Nasional Indonesia Dan Kepolisian Negara Republik Indonesia Aktif Menjadi Penjabat Kepala Daerah", *Unes Law Review*, Vol 6. No. 1, 2023.

¹⁶ *Ibid.*

¹⁷ Mazdan Maftukha Assyayuti, "Urgensi Penataan Ulang Mekanisme Pengisian Jabatan Penjabat Kepala Daerah Perspektif Demokrasi Konstitusional," *Jurnal Lex Renaissance*, No. 2 (April 1, 2022)

The theory used in this research is the theory of constitutionalism which essentially exists to guarantee the constitutional rights of the people or society, from the national level to the regional level. The study findings show that there is an urgent need to restructure the mechanism for filling Acting Regional Head positions from the perspective of constitutional democracy, for the following reasons: *First*, the appointment of Acting Regional Heads suggests the taking over of the people's constitutional right to obtain Regional Heads elected through a direct process. *Second*, the appointment of Acting Regional Heads by the Central Government shifts the principle of regional autonomy in the aspect of direct Regional Head election. Therefore, it is necessary to design improvements in filling Acting Regional Head positions, from the law level to other technical regulations.¹⁸

Fifth discussion, filling Acting Regional Head positions is not carried out through democratic procedures, so it potentially contradicts the provisions of Article 18 paragraph (4) of the 1945 Constitution which affirms that Regional Heads are elected democratically. Furthermore, Law No. 10 of 2016 stipulates that candidates for Acting Regional Heads must come from JPT positions. However, in practice, the appointment of active TNI members as Acting Regional Heads raises concerns about the possibility of violations of legal and democratic principles. This is also related to the provisions in Law No. 34 of 2004 which affirms that the main task of TNI is to maintain the sovereignty and defense of the Unitary State of the Republic of Indonesia.¹⁹

The theory used in this research is the theory of legal norm enforcement, namely law as a way for society to achieve harmony and order and ensure justice and peace. The research results show that the appointment of Andi Chandra As'aduddin who is still active TNI status raises public concern. This is because there is no democratic mechanism for selecting Acting Regional Heads and contradicts Article 18 paragraph (4) of the 1945 Constitution. This also contradicts Law No. 34 of 2004 which requires TNI members to retire first or leave active service if they want to hold civilian positions.²⁰

Sixth discussion, regulations related to filling Regional Head positions have caused controversy among the public. The provisions in Article 201 paragraph (10) of Law No. 10 of 2016 do not explicitly describe the limitations on the types of positions that are entitled to fill Regional Head position vacancies. This article only provides a description of the position levels that can occupy Regional Head position vacancies. This situation is seen as a step to revive the ABRI dual function concept that was once implemented during the New Order era. Besides that, this is also a form of deterioration from Indonesia's democratic order. Several inaugurations of Acting Regional Heads have violated the provisions because there are among them who are still active TNI and POLRI members.

¹⁸ *Ibid.*

¹⁹ Adella Anggia Pramesti, "PENGANGKATAN PENJABAT KEPALA DAERAH DARI ANGGOTA TNI AKTIF DITINJAU DARI SEGI HUKUM", *OURT REVIEW: Jurnal Penelitian Hukum*, Vol. 4, 2024.

²⁰ *Ibid.*

This condition clearly contradicts the provisions of Law No. 34 of 2004 and Law No. 2 of 2002.²¹

The theory used is the theory of regional autonomy, namely the authority given to communities in a number of areas to organize, manage, and advance their own regions based on applicable laws and regulations. The study findings reveal that those who can occupy Acting Regional Head positions only come from ASN employees. However, in practice, there are still several active TNI-Police members who hold these positions. Until finally through Constitutional Court Decision No.15/PUU-XX/2022 it was stated that the placement of certain ASN positions originating from active TNI soldiers and Police members is carried out at Central Institutions. Thus, the placement of Acting Regional Head positions does not have a strong legal basis if filled by active TNI-Police members. If this practice continues to be carried out, then the Central Government has violated the constitution and applicable legal provisions.²²

Seventh discussion, regulations and legality of appointing active TNI to become Acting Regional Heads refer to three laws and regulations in Indonesia, namely Law Number 10 of 2016, Law Number 5 of 2014, and Law Number 34 of 2004. In these three regulations, it is stipulated that the appointment of Acting Governors comes from JPT Madya and the appointment of Acting Regents/Mayors comes from JPT Pratama. In addition, the appointment of active TNI members as Acting Regional Heads also impacts democracy and local community participation, where democracy requires civilian supremacy in government.²³

The theory used in this research is the theory of democracy which is defined as a form of government that involves people's participation in a country. In democracy there is the essence of government of the people, by the people and for the people. So people's involvement in democracy is a reflection of the principle of people's sovereignty. The research results show that juridically the appointment of active TNI as Acting Regional Heads to fill civilian position vacancies through Presidential Decree or Minister of Home Affairs mechanisms is not in line with laws and regulations. It should be remembered that there are basic rules that require TNI members to resign or retire from active service before serving in civilian positions except in institutions that have been mentioned in the TNI Law. The appointment of active TNI as Acting Regional Heads has influenced the position of democracy in Indonesia. This is because the appointment eliminates the principle of openness and the principle of people's supervision in democracy. So the essence of democracy that contains the value of people's sovereignty is not implemented properly as it should be.²⁴

²¹ Idzahti Fitri Nabilah, "IMPELEMENTASI ANGGOTA TNI-POLRI MENJADI PELAKSANAI TUGAS KEPALA DAERAH," *Bureaucr Journal: Indonesia Journal of Law and Social-Political Governance*, Vol.3 No. 2, (Agustus 2023).

²² *Ibid.*

²³ Mochammad Rifqi Hananto dan Achmad, "KEDUDUKAN DEMOKRASI: PENGANGKATAN TNI AKTIF SEBAGAI PJ. KEPALA DAERAH", *Jurnal RES PUBLICA*, Vol. 8 No.1, (2024).

²⁴ *Ibid.*

Eighth discussion, the development of regional government governance lately has become the focus of public attention, especially the polemic surrounding the inauguration of Acting Regional Heads. The polemic includes the duration of Acting Regional Head tenure which is considered too long, degradation of democratic system quality, the level of acceptance of Acting Regional Heads in front of people's representatives (DPRD members), and allegations of political intervention. An aspect that also attracts attention is the placement of active TNI personnel in Acting Regional Head positions which is not in accordance with the provisions of Law No. 34 of 2004 concerning TNI, as recorded in the TNI Reform performance evaluation. Therefore, it needs to be emphasized that the view that active TNI-Police members can occupy Acting Regional Head positions as long as they have obtained high leadership positions is inappropriate. In other words, before occupying Acting Regional Head positions, active TNI members must release their service status to be able to fill high leadership positions.²⁵

The theory used is the rule of law theory which emphasizes that state power must obtain legitimacy or be regulated through legal (constitutional) mechanisms, so that state governmental authority is power limited by legal provisions. The study findings indicate the need for affirmation that the procedure for filling Acting Regional Head positions remains within the framework of democratic interpretation as regulated in Article 18 Paragraph (4) of the 1945 Constitution. In practice, the appointment of Acting Regional Heads by the Central Government is very thick with political content. Therefore, it needs to be a consideration and focus of attention for the government to issue technical regulations as a further implementation of Article 201 of Law No. 10 of 2016.²⁶

Ninth discussion, regulations for appointing TNI-Police personnel as Acting Governor, Acting Regent, and Acting Mayor provide a legal basis for the President and/or Minister of Home Affairs to appoint TNI-Police members to occupy positions outside their parent institutions. The legal basis that specifically regulates the appointment of state civil apparatus positions is the provision of Article 109 of Law Number 5 of 2014 concerning ASN, namely: 1). Police personnel and/or TNI soldiers must resign from active duty, if appointed by the President and/or Minister of Home Affairs for high leadership positions according to competence and needs, 2). in the case of appointing active TNI-Police members in certain government agency environments as high leadership officials is allowed as long as they have met the requirements set by law with the competence of TNI-Police members relevant to occupy these positions. Active TNI-Police members juridically have the opportunity to occupy political positions, but from ethical and other juridical perspectives have the potential to cause conflicts of interest.²⁷

The theory used is the theory of general principles of good governance, namely, referring to the basic foundation that becomes a reference in implementing government and power in order to realize just and accountable governance. The research findings show that the appointment of TNI-Police personnel as Acting Regional Heads by the

²⁵ Abustan, "Implementasi Demokrasi dan Legitimasi Penjabat Kepala Daerah Di Indonesia," *Indonesia Law Reform Journal*, Vol 2 No.3, (2022).

²⁶ *Ibid.*

²⁷ Fajrian Noor Anugrah, "Relevansi Penunjukan Anggota TNI/POLRI Sebagai Penjabat (PJ) Kepala Daerah," *Jurnal Kebijakan Pembangunan*, Vol.18 No. 1, (Juni, 2023).

President through the Minister of Home Affairs is carried out based on attributive authority and does not violate applicable regulatory provisions namely Law No. 23 of 2014, Law No. 10 of 2016, and Law No. 5 of 2014. This provision is also in line with Law No. 5 of 2014 Article 109 paragraph (1) which provides opportunities for non-PNS groups to occupy high leadership positions, one of which is as Acting (Pj) Regional Head, with the requirement of obtaining presidential approval and its filling is done transparently and competitively, and stipulated through Presidential decision.²⁸

Tenth discussion, based on the regulation in TNI Law Number 34 of 2004, there are only 10 (ten) strategic positions that can be held by TNI members in civilian government institutions. Apart from these positions, active TNI members are required to submit resignation if they want to hold positions in civilian environments. In Article 47 of the TNI Law it is mentioned that active TNI personnel can occupy positions in institutions that handle coordination in the field of National Politics and Security, National Defense, Presidential Military Secretary, National Intelligence, National Codes, National Defense Institute, National Defense Council, National Search and Rescue (SAR) Agency, National Narcotics, and the Supreme Court.²⁹

The evolution of threats and strategic environmental conditions requires the assignment of active TNI personnel in a number of ministries and institutions that require specific competencies from military members. In its implementation, there are still several institutions that have not been explicitly regulated in the TNI Law, but are still led by active TNI officers based on Presidential Regulations (Perpres), such as the Maritime Security Agency, National Disaster Management Agency, and National Counter-Terrorism Agency. The placement of positions in ministries and institutions facilitated through Presidential Regulations has gone through an evaluation of the need for TNI soldier expertise in their respective fields, including maritime operations, pursuit operations in forest areas, and readiness in disaster management.³⁰

The theory used in this research is the regulation of military roles in community life known as the concept of civilian control. The research findings indicate that the appointment of active TNI High Officers as Acting Regent of West Seram requires re-evaluation. Civil-military relations in democratic governance systems require the implementation of civilian oversight of military institutions in order to realize military professionalism that is in line with their duties and functions as state defense instruments. TNI needs continuous support in carrying out state defense functions according to the TNI development path towards professionalism. Therefore, it is important for the government or civilian political circles to maintain consistency in TNI professionalism. Commission I of the DPR RI has a strategic role through control functions and regulation formation to ensure transparency and accountability in the process of appointing Acting Regional Heads.³¹

²⁸ *Ibid.*

²⁹ Aulia Fitri, "Polemik Penempatan TNI Aktif Sebagai Penjabat Kepala Daerah", *Kajian Singkat Terhadap Isu Aktual Dan Strategis*, Pusat Penelitian Badan Keahlian DPR RI, Vol. XIV, No.11/I/Puslit, (Juni 2022).

³⁰ *Ibid*

³¹ *Ibid*

Literature study of 10 (ten) articles with the topic of appointing Acting Regional Heads from active TNI elements shows the dominance of contra perspectives in 9 (nine) articles. This consensus indicates that the mechanism for appointing Acting Regional Heads from active TNI elements needs to be reviewed because it is considered to contradict the principles of democratic state and regional autonomy. However, there is 1 (one) article with a pro perspective that assesses active TNI members can be appointed as Regional Head Officials as long as they meet applicable legal provisions and have competencies relevant to the positions they occupy. This finding implies the need for evaluation of existing regulations and the development of appointment mechanisms that are more in line with local democratic principles.

Analysis of 10 (ten) articles shows the use of diverse theoretical foundations. The theories used, among others: constitutionalism theory³², discretion theory³³, principles of legislation formation theory³⁴, legal norm enforcement theory³⁵, regional autonomy theory³⁶, democracy theory³⁷, rule of law theory³⁸, general principles of good governance theory³⁹, dan and civil-military theory⁴⁰. However, there is a theoretical gap in the literature studied, namely the absence of articles using state institutional theory related to checks and balances mechanisms, state administration theory related to characteristics of hierarchical relationships, and position filling theory that has relevance in understanding mechanisms, procedures, and criteria for appointing public officials

A total of 7 (seven) articles were published before the existence of Ministry of Home Affairs Regulation No. 4 of 2023 concerning Acting Governor, Acting Regent, and Acting Mayor. This results in the analysis in these seven articles not yet being able to accommodate the latest regulatory developments that specifically regulate the procedure for nomination, candidate criteria, tenure, and supervision mechanisms of Acting Regional Heads. So, this article is intended to fill the analytical void by examining the problem in the context of updated regulations.

Based on the discussion above, the Author places a position on the contra perspective that the appointment of Acting Regional Heads contradicts Article 18 paragraph (4) of the 1945 Constitution. This is because the mechanism for appointing Acting Regional Heads from active TNI elements is not in accordance with democratic principles that uphold people's sovereignty. The provisions of Article 18 paragraph (4) of the 1945 Constitution contain democratic principles that must be imbued in every filling of Regional Head positions both definitive and temporary.

In understanding the context of Acting Regional Head positions, it must first be distinguished between political positions and administrative positions. Political positions are positions occupied by individuals through political processes or democratic general

³² Dalam artikel Juanda dan Ogiandhafiz Juanda dan Mazdan Maftukha Assyayuti.

³³ Dalam artikel Raihan Ardiansyah, Waluyo, dan Rosita Candrakirana.

³⁴ Dalam artikel Egip Satria Eka Putra.

³⁵ Dalam artikel Adella Anggia Pramesti.

³⁶ Dalam Idzahti Fitri Nabilah, Slamet, dan Suhartono.

³⁷ Dalam artikel Mochammad Rifqi Hananto dan Achmad.

³⁸ Dalam artikel Abustan.

³⁹ Dalam artikel Fajrian Noor Anugrah.

⁴⁰ Dalam artikel Aulia Fitri.

elections based on the principles of direct, general, free, secret, honest and fair.⁴¹ While administrative positions are positions held by state civil apparatus (ASN) or career officials who are recruited and appointed based on professional qualifications and certain competencies.⁴² In the position filling mechanism, there are at least two aspects that are considered. *First*, the filling requires or does not require participation or support from the people (public). *Second*, the filling is carried out collegially or by certain individuals.⁴³

To determine this, it can be seen in the provisions in Ministry of Home Affairs Regulation No. 4 of 2023 as a technical basis that regulates the requirements and mechanisms for appointing candidates for Acting Regional Heads. In Article 3 of Ministry of Home Affairs Regulation No. 4 of 2023 it is mentioned that candidates for Acting Regional Heads must meet the following requirements:

- a. Have experience in government administration as evidenced by position history;
- b. ASN officials or officials in certain ASN positions who hold JPT Madya in the Central Government or Regional Government environment for Acting Governor candidates and hold JPT Pratama in the Central Government or Regional Government environment for Acting Regent and Acting Mayor candidates;
- c. Employee performance assessment or by other names for the last 3 (three) years at least have good value;
- d. Have never been subject to severe disciplinary punishment in accordance with the provisions of laws and regulations; and
- e. Physically and mentally healthy as evidenced by a certificate from a government hospital.

From the requirements above, it can be seen that the Acting Regional Head position has characteristics that are more inclined towards administrative positions rather than political positions. This can be seen from several requirements, namely Acting Regional Heads must come from High Leadership Positions (JPT) Madya and High Leadership Positions (JPT) Pratama, focus on government administration experience and employee performance assessment, all of which are in the administrative position domain. The appointment process carried out through collegial mechanisms by internal bureaucracy and not through election by the people also strengthens the administrative position character.

In addition, Acting Regional Heads only carry out functions that are administrative and procedural. Limited tenure and temporary nature, so the main focus is maintaining public service continuity and implementing existing programs without making significant policy changes. The authority possessed is also limited, so they cannot make strategic decisions.⁴⁴

⁴¹ Marsono Sastra Djatmiko, *Hukum Kepegawaian Indonesia*, Jakarta: Penerbit Djamb Atan, (1990)., hlm 67.

⁴² *Ibid*.

⁴³ Bagir Manan, *Teori Dan Politik Konstitusi*, Yogyakarta: Fakultas Hukum UII, (2003)., hlm.133-134.

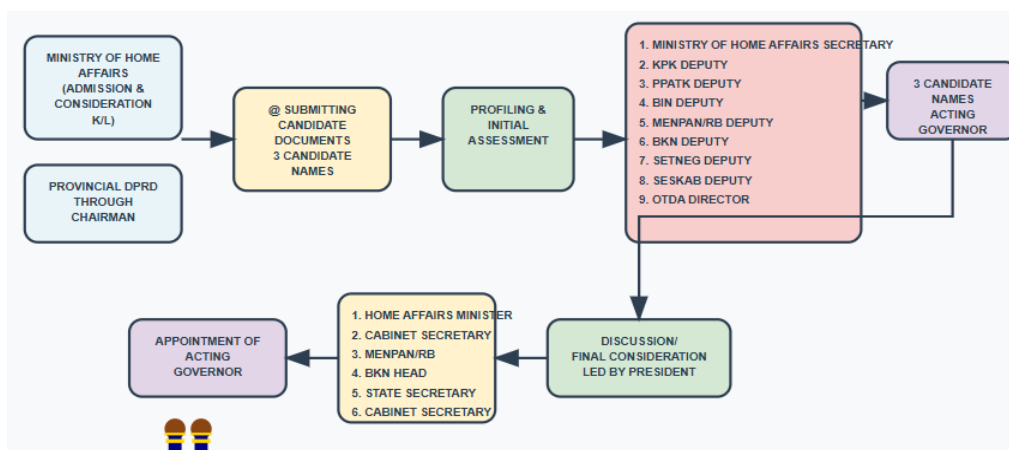
⁴⁴ Lihat Pasal 15 Permendagri No. 4 Tahun 2023. Kewenangan tersebut dapat dikecualikan setelah mendapatkan persetujuan tertulis dari Mendagri.

This is different from Definitive Regional Heads who go through a direct election process so they have political legitimacy from the people. Longer working period, namely for 5 (five) years for one term of office, so they are expected to be able to implement work programs that are more transformative, implement the vision-mission that has been campaigned during the election, and see the real impact of the programs implemented. In addition, the authority possessed is also full as a result of the legitimacy of the democratic process.

The mechanism for appointing Acting Regional Heads based on Ministry of Home Affairs Regulation No. 4 of 2023 also shows that this position is an administrative position, for the process can be seen in the following figure:

Figure 1.2

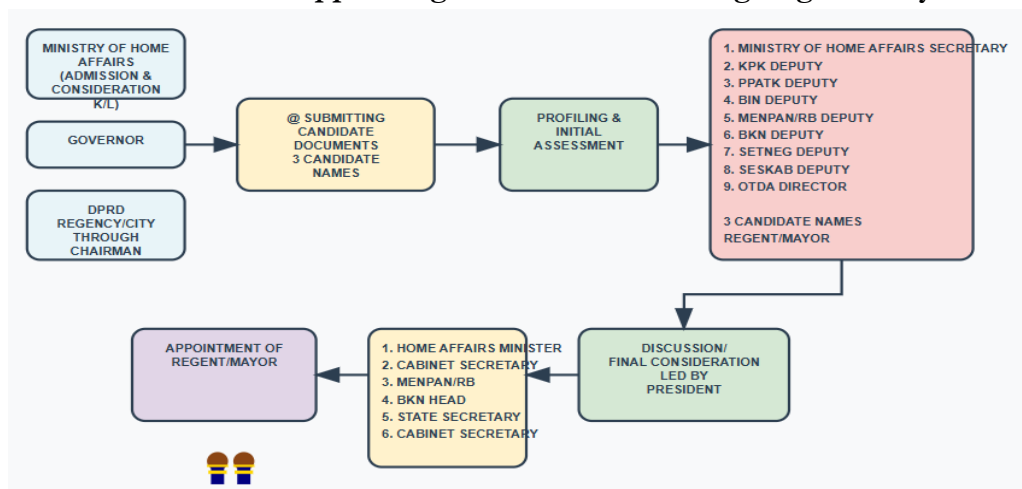
Mechanism for Appointing Candidates for Acting Governor



Source: Data processed by the Author

Figure 1.3

Mechanism for Appointing Candidates for Acting Regent/Mayor



Source: Data processed by the Author

Based on the figure above, it can be seen that in the mechanism for appointing Acting Regional Heads there is no application of the check and balance principle because of the very strong dominance of the Central Government. The checks and balances mechanism is one of the reform demands aimed at ensuring that state power can be regulated, limited and even controlled as well as possible, so that abuse of power by state administration apparatus or individuals who happen to be holding positions in the relevant state institutions can be prevented.⁴⁵ However, in this case the Minister of Home Affairs has full authority in appointing Acting Regional Heads and his decisions are unilateral without legislative oversight in this case DPRD. DPRD authority is limited to proposing prospective candidate names and can only accept final decisions.

In addition, in the accountability aspect, it does not show the characteristics of hierarchical relationships, Max Weber explains that positions are arranged in hierarchical levels from top to bottom and to the side.⁴⁶ In Acting Regional Heads, accountability reports skip hierarchical levels to the side, namely to DPRD and local communities. Accountability reports are given regularly to the Minister of Home Affairs. So, accountability follows the vertical command chain to direct superiors. This also reflects the centralistic nature of supervision and strengthens central control over regions.

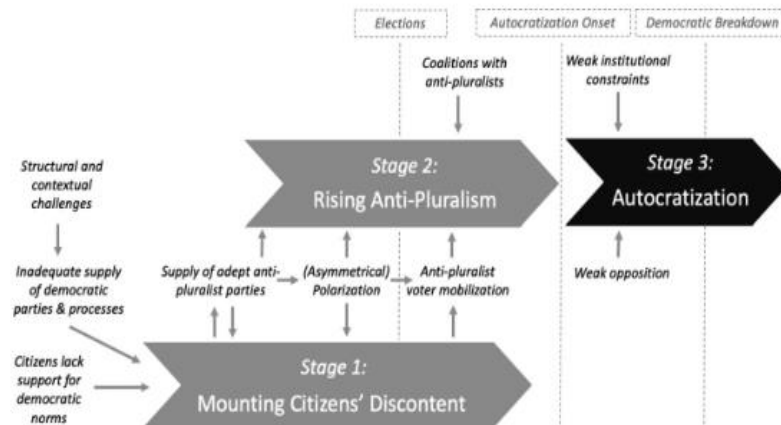
Through the centralized appointment mechanism by the President and Minister of Home Affairs, there appears to be a shift in the character of democratic governance towards autocracy. Where the democratic system is slowly being overthrown by unilaterally dismantling democratic institutions. There is no effective participation from democratic institutions such as DPRD which should actually function as a checks and balances instrument in filtering candidates for Acting Regional Heads with active TNI backgrounds.

The Author will provide a conceptual picture of the phenomenon of shifting the character of democratic governance towards autocracy. This picture is important to provide an understanding of how certain practices in filling public positions, especially Acting Regional Heads, can reflect tendencies away from democratic principles

⁴⁵ Ali Abdul Wakhid, "Eksistensi Konsep Birokrasi Max Weber Dalam Reformasi Birokrasi Di Indonesia," Jurnal TAPIs Vol.7 No.13, (Juli-Desember 2011), hlm.128.

⁴⁶ Lihat Pasal 18 Permendagri No.4 Tahun 2023. Laporan pertanggungjawaban disampaikan kepada Menteri paling sedikit 3 (tiga) bulan sekali.

Figure 1.4
Autocratization Process and Its Stages



Source: Journal Disrupting the autocratization sequence: towards democratic resilience

Anna Luhmann explains the pattern of autocracy process stages as follows:⁴⁷

1. The initial phase is increasing public dissatisfaction with the performance of parties and democratic institutions in solving structural and contextual problems, economic instability, governance dysfunction, and cultural transformation that has a bad impact on social conditions. This dissatisfaction stems from election moments that are exploited by anti-pluralist leaders to erode trust and weaken public commitment to democratic norms, institutions, and actors.
2. The second phase is related to public dissatisfaction with democracy which becomes an opportunity for anti-pluralist leaders to gain power by using their political skills to exploit public disappointment to legitimize polarization rhetoric between "oppressed people" versus "corrupt ruling elite". This strategy is a way to mobilize potential mass support and strengthen the political capital of anti-pluralist groups in building alliances with other dominant groups to guarantee positions in power structures.
3. The third phase is the climax of autocratization where autocrats arbitrarily change democratic institutions to destroy the resilience of the democratic system, accountability mechanisms, and weaken the existence of opposition. This is done in order to eliminate various legal provisions that can hinder the executive from controlling power completely.

The appointment of Acting Regional Heads from active TNI circles reflects autocratic practices that weaken the authority of democratic institutions, namely DPRD and are not in line with the spirit of the 1945 Constitution. The appointment also violates

⁴⁷ Anna Lührmann, "Disrupting the Autocratization Sequence: Towards Democratic Resilience," *Journal Democratization*, No. 5, (2021), hlm. 1018.

the spirit of constitutional reform that separates the role of TNI from practical politics, as reflected in Article 30 of the 1945 Constitution which places TNI as a state defense tool, not as a political actor. The placement of Active TNI in Acting Regional Head positions can also cause problems, especially in the implementation of regional government. Military background that is opposite to civilian bureaucrats has the potential to cause confusion in policy formation and implementation.⁴⁸

This is in line with Melissa Crouch's writing that the amended 1945 Constitution faces serious challenges under threats from liberal forces, including the military that advocates constitutional changes to restore aspects of the 1945 Constitution that facilitated Suharto's authoritarian government.⁴⁹ These challenges have been visible since entering 2023, where there have been regulatory changes in the legislative field that loosen restrictions on the involvement of active military officers in government. This indicates an urgent need for further reform, especially in limiting the role of the military in the legislative and executive spheres, including in filling high positions and strategic positions in government bureaucracy.⁵⁰

The appointment of Acting Regional Heads although having legitimate legal justification based on Law 23 of 2014 and Law No. 10 of 2016, should not be done arbitrarily. The potential for "going overboard" can occur in the form of abuse of power such as appointing acting officials who do not have government administration experience qualifications, extending tenure without clear reasons, or even exploiting the limitations of DPRD authority in supervising acting officials for certain political interests. Therefore, there must be strong checks and balances mechanisms through tenure limitations, transparency in the appointment process, intensive supervision from DPR and DPRD, and active community participation in monitoring.

B. Regulatory Basis That Can Be Corrected for the Appointment of Acting Regional Heads from Active TNI Elements in Regional Autonomy Perspective

The appointment of Andi Chandra As'aduddin who has active TNI status as Acting Regional Head of West Seram Regency, was assessed by several civil organizations and academics such as Perludem, Center for Constitutional Studies Andalas University and Center for Political Studies FISIP UI as not in line with democracy and laws and regulations.⁵¹ In addition, the principle of the widest possible regional autonomy becomes one of the important foundations that should guarantee regional independence in managing government affairs. However, in reality, the implementation of regional autonomy as regulated in Article 18 of the 1945 Constitution and Law No. 23 of 2014 has

⁴⁸ Aulia Fitri, *Op.cit*, hlm 4.

⁴⁹ Melissa Crouch, "The Military Turn in Comparative Constitutional Law: Constitutions and the Military in Authoritarian Regimes," *Annual Review of Law and Social Science*, Vol. 20:53-69 (October 2024), hlm.64.

⁵⁰ *Ibid*.

⁵¹ Aulia Fitri, *Op.cit*, hlm.2.

not run optimally. One indicator is seen from the limited authority of regions to make strategic decisions in appointing Acting Regional Heads.

The reason the Minister of Home Affairs appointed Andi Chandra As'aduddin as Acting Regional Head was due to security considerations. Based on factual data collected by the Ministry of Home Affairs, West Seram Regency has the potential for horizontal conflict due to territorial boundaries in 9 (nine) regency areas. So from the track record, competence, and capacity side, Andi Chandra is considered capable of detecting, handling and reducing the conflict.⁵² However, this security justification becomes problematic when linked to the main duties and functions of Acting Regional Heads which should be administrative and procedural.

The practice of appointing Acting Regional Heads from active TNI elements should not contradict Constitutional Court Decision No. 67/PUU-XIX/2021 which affirms that the process of filling Regional Head position vacancies is still within the scope of "democratic" meaning as regulated in Article 18 paragraph (4) of the 1945 Constitution and at the same time provides guarantees for the community that the acting appointment mechanism takes place openly, transparently, and accountably to produce leaders who are competent, have integrity, and are in accordance with regional aspirations. In addition, careful consideration is needed so that the appointed Acting Regional Head is able to implement regional development plans in accordance with the vision and mission of the Regional Long-Term Development Plan (RPJP) concerned.⁵³

The appointment of active TNI to occupy Acting Regional Head positions requires analysis that refers to Law No. 34 of 2004 concerning TNI which has been revised to Law No. 3 of 2025 concerning TNI. This analysis is crucial to ensure whether the TNI Law provides space for TNI members to carry out regional leadership functions. In Law No. 34 of 2004, active TNI were only allowed to fill civilian positions in 10 (ten) ministries or government agencies, but Law No. 3 of 2025 expands the opportunities for active TNI to fill positions in 14 (fourteen) ministries or government agencies, among others:

1. Coordinating Ministry for Political and Security Affairs;
2. Ministry of Defense;
3. Presidential Secretariat and Presidential Military Secretariat;
4. State Intelligence Agency;
5. Cyber and/or Code State Agency;
6. National Resilience Institute;
7. National Search and Rescue (SAR) Agency;

⁵² DewDewi Nurita, "Soal Keamanan Jadi Alasan Mendagri Pilih Brigjen TNI Andi Chandra Jadi Pj Bupati," *Tempo.Com*, 2022, <https://www.tempo.co/politik/soal-keamanan-jadi-alasan-mendagri-pilih-brigjen-tni-andi-chandra-jadi-pj-bupati-346154>.

⁵³ Sri Pujiarti, "Ketentuan Penjabat Pengganti Kepala Daerah Jelang Pilkada Serentak Sejalan dengan Prinsip Kedaulatan Rakyat", *Mkri.id*, Jakarta, 22 May 2022. <https://www.mkri.id/index.php?page=web.Berita&id>.

8. National Narcotics Agency (BNN);
9. Supreme Court;
10. National Border Management Agency (BNPP);
11. Disaster Management Agency;
12. Counter-Terrorism Agency;
13. Maritime Security Agency; and
14. Attorney General's Office of the Republic of Indonesia.

Based on the revision results, it explicitly does not include the position of Acting Regional Head as one of the positions that can be occupied by active TNI members. If TNI members want to hold civilian positions outside the 14 (fourteen) ministries or government agencies that have been determined, they must first resign or retire from active service.⁵⁴ Thus, it can be concluded that the Acting Regional Head position is outside the regulatory framework that has been established in the TNI Law.

Furthermore, Article 201 paragraphs (10) and (11) of Law No. 10 of 2016 becomes the basis for appointing Acting Governors from High Leadership Positions (JPT) Madya and Regents/Mayors from High Leadership Positions (JPT) Pratama. To find out what positions are included in the JPT Madya and JPT Pratama categories can be seen in the explanation of Article 19 paragraph (1) of Law No. 5 of 2014, namely as follows:

Tabel 1.4

Categories of High Leadership Positions (JPT) Madya and High Leadership Positions (JPT) Pratama

High Leadership Positions (JPT) Madya	High Leadership Positions (JPT) Pratama
<p>What is meant by "High Leadership Position Madya" includes:</p> <ol style="list-style-type: none"> 1. Secretary General of the Ministry; 2. Secretary of the Ministry; 3. Principal Secretary; 4. Secretary General; 5. Secretariat of State Institutions; 6. Secretary General of Non-Structural Institutions; 7. Director General; 	<p>What is meant by "High Leadership Position Pratama" includes:</p> <ol style="list-style-type: none"> 1. Director; 2. Head of Bureau; 3. Deputy Assistant; 4. Secretary of the Directorate General; 5. Secretary of the Inspectorate General; 6. Secretary of the Head of Agency; 7. Head of Centre;

⁵⁴ Lihat Pasal 47 ayat (2) UU No. 3 Tahun 2025.

8. Deputy; 9. Inspector General; 10. Chief Inspector; 11. Head of Agency; 12. Ministerial Expert Staff; 13. Head of the Presidential Secretariat; 14. Head of the Vice Presidential Secretariat; 15. Presidential Military Secretary; 16. Head of Secretariat; 17. Presidential Advisory Council; 18. Provincial Secretary; and 19. Other equivalent positions.	8. Inspector; 9. Head of Grand Hall; 10. Provincial Regional Secretariat Assistant; 11. District/Municipal Regional Secretary; 12. Provincial Department Head/Agency Head; 13. Regional People's Representative Council Secretary; and 14. Other equivalent positions.
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Source: Law No. 5 of 2014 concerning State Civil Apparatus processed by the Author

From the job categories above, what is interesting is the phrase "other equivalent positions". This phrase is vulnerable to misinterpretation by implementers, namely the Central Government, so it can open excessive space for other positions to be equated with JPT. This becomes important because in appointing Acting Regional Heads based on Ministry of Home Affairs Regulation No. 4 of 2023 only requires JPT Madya or JPT Pratama. Thus, the Ministry of Home Affairs will tend to focus more on career levels and administrative competencies that exist in the National Civil Service Agency (BKN) list rather than based on technical qualifications that analyze the competencies of prospective acting officials from non-civilian or military circles.

Presidential Regulation (Perpres) No. 79 of 2020 concerning the Second Amendment to Presidential Regulation No. 90 of 2012 concerning the State Intelligence Agency also states that Regional BIN Heads are equated with High Leadership Position Pratama or structural echelon II.a positions.⁵⁵ Based on these provisions, Andi Chandra As'aduddin who previously served as Head of the State Intelligence Agency (BIN) Central Sulawesi, meets the JPT Pratama criteria regulated in Law No. 10 of 2010 and Ministry of Home Affairs Regulation No. 4 of 2023. Although Law No. 5 of 2014 does not mention Regional BIN Head as one of the JPT Pratama categories, the phrase "other equivalent positions" provides a gap for the equalization of these positions.

Based on the description above, it can be known that there is another entry point that legitimizes the placement of TNI members outside the 14 (fourteen) institutions stipulated in the TNI Law, namely through the provisions of Law No. 20 of 2023 concerning ASN. Where Article 19 paragraph (2) reads "Certain ASN positions can be filled by Indonesian National Army soldiers and Indonesian National Police members". The filling of Indonesian National Army and Indonesian National Police positions by

⁵⁵ Lihat Pasal 54 ayat (3) Perpres No.79 Tahun 2020. Kepala Biro, Direktur, Inspektur, Kepala Binda, dan Kepala Pusat adalah jabatan Pimpinan Tinggi Pratama atau jabatan struktural eselon II.a.

ASN and vice versa aims to ensure that ASN, Indonesian National Army soldiers, and Indonesian National Police members have balance and equality in their career development based on the Merit System.⁵⁶

McCourt defines the merit system as "*the appointment of the best person for any given job*" which means appointing the best person for any job. So jobs or positions should be filled by the best people because of their qualities and abilities.⁵⁷ Berman, et al also explain that the selection process in the merit system must emphasize technical qualifications by using processes that analyze job competencies and require open application procedures.⁵⁸ However, the implementation of the merit system in appointing TNI members to civilian positions, especially for JPT Madya and JPT Pratama positions, still experiences fundamental weaknesses in terms of clarity of technical qualifications and transparency of procedures.

This problematic becomes increasingly complex when linked to the implementation of Ministry of Home Affairs Regulation No. 4 of 2023, the clarity of technical qualifications about how TNI member competencies can be equated with the qualifications needed to carry out civilian government functions has not been specifically regulated.⁵⁹ In the context of Acting Regional Heads, technical qualifications become blurred when faced with educational backgrounds and military experience that are fundamentally different from the needs of regional government administration. In addition, there are disparities in the assessment system that still relies on rank aspects and military experience, without considering in depth the relevance of civilian competencies needed.⁶⁰

Transparency of procedures is also an equally important aspect. The process of appointing Acting Regional Heads often takes place in a closed manner with minimal public information regarding selection criteria, timeline, and evaluation mechanisms. This condition raises public doubts about the objectivity and fairness of the selection process. Minimal information openness also impacts weak social control over the Acting Regional Head appointment process. Also the system of dropping acting officials from outside the region can cause Acting Regional Heads to have minimal understanding of territorial knowledge and local community socio-culture.

Although regulating formal requirements, Ministry of Home Affairs Regulation No. 4 of 2023 does not provide specific criteria and procedures on how the assessment and selection process is carried out in the Final Assessment Team (TPA). The absence of measurable assessment standards can create broad interpretational space for TPA

⁵⁶ Lihat Penjelasan Pasal 20 UU No.20 Tahun 2023.

⁵⁷ Willy McCourt and Booth Street West, "Development Economics and Public Policy The Merit System and Integrity in the Public Service 1," *Public Integrity and Anticorruption in the Public Service*, no. 20 (2007), hlm.5.

⁵⁸ Evan M. Berman, dkk, *Human Resource Management in Public Service: Paradoxes, Processes, and Problems*, USA: Sage Publications, (2013), hlm. 101, https://books.google.co.id/books?id=aUvwbSAmZ4MC&printsec=frontcover&redir_esc=y#v=onepage&q&f=false.

⁵⁹ Prasajo, Eko, dkk., "Reformasi Birokrasi dan Sistem Merit di Indonesia: Tantangan dan Prospek." *Jurnal Kebijakan dan Administrasi Publik*, Vol. 22, No. 1, 2018, hlm. 45

⁶⁰ Agus Dwiyanto, *Mengembalikan Kepercayaan Publik Melalui Reformasi Birokrasi*, Jakarta: Gramedia Pustaka Utama, (2011), hlm. 134, <https://books.google.co.id/books?id=dyRqHYpVRRcC&printsec=frontcover&hl=id#v=onepage&q&f=false>.

members in determining the eligibility of acting candidates. The involvement of various ministries and institutions in the selection process without checks and balances from DPRD can open space for political interests in appointing Acting Regional Heads.

Regarding the prerequisites for Acting Regional Head candidates, it must also be emphasized "coming from ASN officials" and eliminate the phrase "or officials in certain ASN positions". This can cause ambiguity that allows interpretation that TNI members from other ministries/institutions can be categorized as "officials in certain ASN positions" without having actual ASN status. Acting Regional Heads have strategic responsibilities in managing regional government, which requires deep understanding of public administration, government management, and local socio-political dynamics. Officials from ASN circles who have gone through selection processes, education, and continuous capacity development have competencies that are more suitable for carrying out civilian government functions⁶¹

Ministry of Home Affairs Regulation No. 4 of 2023 as an operational technical foundation is a mandate from Constitutional Court Decision Number 67/PUU-XIX/2021 and so far still has several weaknesses. The mandate to create specific operational technical foundations is addressed to the government, so the legal umbrella that should be made is Government Regulation (PP) which is a derivative of the Law that regulates technical implementation,⁶² not merely Ministry of Home Affairs Regulation made by the ministry. These weaknesses show that Ministry of Home Affairs Regulation No. 4 of 2023 requires fundamental revision or even needs to be replaced with higher regulations, namely Government Regulations to provide strong legal legitimacy and more democratic and transparent mechanisms.

IV. CONCLUSION

Based on the analysis of both problem formulations that have been discussed, it can be concluded that the construction of regional autonomy perspectives in various studies before the enactment of Ministry of Home Affairs Regulation No. 4 of 2023 is dominated by perspectives stating that the practice of appointing Acting Regional Heads from active TNI circles tends to erode the essence of regional autonomy because it sidelines local democracy and reduces DPRD authority as regional community representation. In the perspective of correcting regulatory foundations, a more assertive regulatory reformulation is needed in limiting the appointment of Acting Regional Heads from active TNI elements, both in the ASN Law and in Ministry of Home Affairs Regulation No. 4 of 2023. The ideal regulatory foundation must strengthen transparency, accountability, and DPRD participation mechanisms in the selection process, as well as establish clear criteria and technical competencies relevant to regional government needs.

⁶¹ Yeremias T. Keban, *Manajemen Pemerintahan Daerah: Teori Dan Praktik*, Yogyakarta: Andi Offset, (2021)., hlm. 167.

⁶² Maria Farida Indrati., *Ilmu Perundang-Undangan: Jenis, Fungsi, Dan Materi Muatan*, Sleman: PT. Kanisius, 2020, hlm.103.

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