

Implications of Appointing Acting Regional Heads (Pj) for Democracy in Indonesia from the Perspective of *Maslahah Mursalah*

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Abstract

*2024 will be a political year in Indonesia. There will be general elections and local elections that year. Not only is it seen as a democratic party, but behind that many problems have arisen, such as the term of office of the definitive regional head ends in 2022, this causes a power vacuum and will be filled by elected officials from the central government who are referred to as temporary. The direct election has the potential to be violated. The approach of research in this research are statute approach and conceptual approach. This research is descriptive-analytic. The data collection technique used in this study is a qualitative data analysis technique. This research uses the theory of democracy and *masalah mursalah*. The result of the research shows that the acting regional heads have implications for the quality of democracy in Indonesia, because in practice the acting regional heads are not democratic, where there is no community participation in the recruitment process and a lack of the legitimacy of acting regional heads because they only have legal legitimacy. Then in *Maslahah Mursalah's* view, acting regional heads have benefits and harms, but the harms are bigger.*

Keywords: *Acting Regional Head, Democracy, Maslahah Mursalah*

Introduction

The year 2024 will be a big political year in Indonesia. In that year, general elections and regional head elections will be held simultaneously. The general election will be held on February 14, 2024. Meanwhile, regional head elections will be held on November 27, 2024.¹ This has also been stated in Article 201 paragraph (8) Law Number 10 of 2016.

The 2024 simultaneous regional head elections are not only seen as a massive democratic celebration in Indonesia, but behind all that, many problems have emerged. One of them is the end of the definitive regional head's term of office in 2022, which causes a

¹ Fitria Chusna Farisa, "Pemilu Dan Pilkada Serentak 2024: Alasan, Urgensi, Dan Tantangan," Kompas.com, 2022, <https://nasional.kompas.com/read/2022/06/02/14514481/pemilu-dan-pilkada-serentak-2024-alasan-urgensi-dan-tantangan>.

power vacuum. The regional head elected in the 2020 regional elections served his term of office for less than 4 years. Then the regional head elected in the 2017 regional elections ended his term of office in 2022. This is a problem because there is a long vacancy, namely 2 years. So that the highest leader in the region will be led by a bureaucratic official chosen by the central government, known as an official, who has no emotional ties with the people he leads, unlike the results of direct people's elections.²

In May 2022, the filling of acting regional heads for 5 governors, 37 regents, and 6 mayors has begun. The acting regional heads to be appointed in 2022 are for 101 regions and in 2023 for 171 regions. Thus, the total number of regional heads to be appointed by the government until the simultaneous elections in 2024 is 272. This number is half the total number of provinces, regencies and cities in Indonesia. In addition to the large number, the term of acting regional heads is also very long, namely until the implementation of the simultaneous regional head elections on November 27, 2024, plus the time for determination by the Regional General Election Commission and preparation for inauguration, not including if there is a lawsuit from the losing candidate at the Constitutional Court. Thus, the total term of office of several acting regional heads reaches 2.5 years or even more. There has never been a history of the Indonesian government where acting regional heads have had such a long term of office.³

The person with the authority to elect acting regional heads for governors is the president upon the proposal of the Minister of Home Affairs, while the authority to elect acting regional heads for regents/mayors is the Minister of Home Affairs upon the proposal of the governor, but the process must remain transparent and accountable.⁴ The Constitution has mandated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, that Governors, Regents, and Mayors as heads of provincial, district,

² Mochammad Tommy Kusuma, Elva Imeldatur Rohmah, and Nafi Mubarak, "Pengisian Kekosongan Jabatan Kepala Daerah Menjelang Pemilihan Serentak 2024," *Sosio Yustitian: Jurnal Hukum Dan Perubahan Sosial* 2, no. 4 (2024).

³ Eko Prasajo, "Legitimasi Penjabat Kepala Daerah," Kompas.id, 2022, Eko Prasajo, "Legitimasi Penjabat Kepala Daerah," Kompas.id, 2022, <https://www.kompas.id/baca/artikel-opini/2022/05/09/legitimasi-penjabat-kepala-daerah>.

⁴ Mazdan Maftukha Assyayuti, "Urgensi Penataan Ulang Mekanisme Pengisian Jabatan Penjabat Kepala Daerah Perspektif Demokrasi Konstitusional," *Jurnal Lex Renaissance* 7, no. 2 (2022).

and city governments are elected democratically. Although democratically is not explicitly interpreted as direct elections, after the enactment of Government Regulation in Lieu of Law Number 1 of 2014, the phrase democratic in regional elections is more inclined to be interpreted as direct choice by the people.

The mechanism for electing regional heads, which is essentially directly elected by the people as mandated by the constitution, considering that Indonesia is a democratic country, has the potential to be violated in the 2022-2024 period, because the number of acting regional heads is very large, and their terms of office are also quite long. There is no transparent mechanism in the Law regarding the mechanism for electing regional heads, and the lack of community participation in the process of electing acting regional heads is the reason for the lack of democracy in the election of regional heads.

This condition has the potential to produce several acting regional heads whose preferences are based on the political interests of those in power, not on the will of the people.⁵ Therefore, it can be said that the position of acting regional head is less democratic, considering that Indonesia is a democratic country where the people are the highest strata.

Various studies that examine the Acting Regional Heads have been studied. To distinguish this study from other studies, the author specifically examines the Implications of the Appointment of Acting Regional Heads on Democracy in Indonesia from the Perspective of *Maslahah Mursalah*. The studies that have been conducted related to the author's thesis are as follows.

First, Abustan journal research, entitled "*Implementation of Democracy and Legitimacy of Acting Regional Heads in Indonesia*". This journal takes the topic of the implementation of democracy that contains legal truth and provides justice. The purpose of the research is to determine the aspects that are of public concern in the appointment of acting regional heads. This research is empirical research that uses a sociological juridical

⁵ Ahmad Gelora Mahardika, "Problematika Yuridis Pengisian Penjabat Sementara Kepala Daerah Dalam Sistem Ketatanegaraan Indonesia," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 2, no. 8 (2022).

approach. The difference with the author's research is that the author's research discusses the impact of the appointment of acting regional heads on democracy and how the *masalah mursalah* views it.⁶

Second, Dio Ekie Ramanda's journal research, entitled "Reorganizing the Authority to Appoint Acting Regional Heads". This journal aims to conduct studies and analysis to obtain a design for the mechanism for appointing acting regional heads in the implementation of ideal regional government. The research method used in this research is the normative legal research method using primary and secondary legal materials. The difference with the author's research is that the author's research discusses the impact of appointing acting regional heads on democracy and how the *masalah mursalah* views it.⁷

Third, Syarifuddin Usman's journal research, entitled "Polemic of Appointment of Acting Regional Heads, Case Study of Submission of Temporary Acting Regional Heads of Morotai Island Regency". This journal focuses on the problematic appointment of acting regional heads in Morotai Island Regency, because the Minister of Home Affairs is considered to have ignored the governor's proposal. The Minister of Home Affairs' actions are qualified as malpractice in governance. Even insulting the governor's authority as a representative of the central government in the region. In essence, this journal investigates the problem of appointing acting regional heads, especially in Morotai Island Regency, in which there are doubts about the appointment of acting regional heads who are considered political. The difference with the author's research is that the author's research discusses the impact of appointing acting regional heads on democracy and how the *masalah mursalah* views it.⁸

Fourth, Mazdan Maftukha Assyayuti's journal research, entitled "The Urgency of Restructuring the Mechanism for Filling the Position of Acting Regional Heads from the

⁶ Abustan, "Implementasi Demokrasi Dan Legitimasi Penjabat Kepala Daerah Di Indonesia," *Indonesia Law Reform Journal* 2, no. 3 (2022).

⁷ Dio Ekie Ramanda, "Menata Ulang Kewenangan Mengangkat Penjabat Kepala Daerah," *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 6, no. 3 (2022).

⁸ Syarifuddin Usman, "Polemik Pengangkatan Penjabat Kepala Daerah: Studi Kasus Pengajuan Penjabat Sementara Kepala Daerah Kabupaten Pulau Morotai," *JSSH: Jurnal Sains, Sosial, Dan Humaniora* 2, no. 1 (2022).

Perspective of Constitutional Democracy". This journal answers the urgency of restructuring the mechanism for filling the position of acting regional heads from the perspective of constitutional democracy. This research method uses a normative/doctrinal research type using a legislative and conceptual approach. The difference with the author's research is that the author's research discusses the impact of appointing acting regional heads on democracy and how the *masalah mursalah* views it.⁹

Method

This research uses library research, namely this research is carried out by writing, classifying, reducing, and making data obtained from written sources.¹⁰ In this study, the author uses various data sources from valid books, journals, documents, and websites related to Acting Regional Heads. This research is descriptive-analytical in nature which will describe the phenomena that occur, then compile, explain, analyze and interpret them, then draw conclusions.¹¹ The approach used in this thesis is the statute approach and the conceptual approach, namely the approach carried out by examining all laws and regulations related to the legal issues being handled and the approach that departs from the views and doctrines that have developed in legal science. To obtain data in conducting this research, the data collection technique that the author uses in this research is a qualitative data analysis technique.¹² By conducting a review of the literature related to the title that the author is researching, then analyzed to produce answers to the questions raised in the research. The data in this study are secondary data with primary legal materials, Secondary data in this study is data related to the object being studied in the form of journals and other sources that also discuss the problems that the author is studying so that they can help in analyzing the problems in this study. The Primary Legal Material used in this study is Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015

⁹ Assyayuti, Op.Cit.,

¹⁰ Sutrisno Hadi, *Metodologi Research* (Yogyakarta: Andi Offset, 1990).

¹¹ Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi* (Bandung: Penerbit Alfabeta, 2017).

¹² Ibid.,

concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law.

Discussion

Democracy is a procedure in which decisions are made collectively. The purpose of democracy is to ensure that decisions affecting the entire society are taken by all members of society, and that each member has equal rights in the decision-making process. Thus, democracy applies the principle of popular control in the formation of collective decisions and ensures equal rights in the process of control.¹³ Democracy means "the people rule" or "government by the people". In a simple sense, democracy can be interpreted as a government carried out by the people themselves.¹⁴

Several important principles in democracy as a reference for evaluating the level of democracy in the process of appointing Acting Regional Heads during the transition period of the 2024 National Simultaneous Regional Head Elections. The indicators taken by the author from the views of several experts to determine the parameters of democracy are Community Participation and Community Legitimacy. On the other hand, it will also be discussed how *masalah mursalah* sees the implications of appointing acting regional heads for democracy.

1. Community Participation in the Process of Appointing Acting Regional Heads.

Representative democracy, which is a form of development of classical democratic theory, is generally used by many countries that implement a democratic system. However, the practice of representative democracy has several problems that can lead to a decline in the values of democracy itself. In practice, representative democracy tends to view the people as inactive objects of democracy and have no role in political decision-making. The people are expected to only accept decisions made by their representatives, so that the

¹³ Beetham. David, *Demokrasi: 80 Tanya Jawab* (Yogyakarta: Kanisius, 2000).

¹⁴ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: PT Gramedia Pustaka Utama, 2007).

people only have a passive role. In addition, the people are often not given sufficient access to information in the political decision-making process.¹⁵

The problems and criticisms of representative democracy have resulted in a new approach in democratic theory called participatory democracy. Participatory democracy is an attempt to strengthen democracy and serves as a counterpoint to representative democracy. This approach aims to provide space and opportunity for the people to participate in every process of public policy making.¹⁶

In essence, participatory democracy involves active political participation by the people. According to Samuel P. Huntington and Joan Nelson, political participation is an individual activity as a citizen that aims to influence government decision-making.¹⁷ Rasinski and Tyler's opinion states that political participation involves community actions that have an impact on political decisions.¹⁸ The assumption is that individuals in society best understand their own wants and needs. Therefore, individual political participation is very important in determining policies related to society itself which are formed by the government.

Based on the previous definition of political participation presented by Samuel P. Huntington and Joan Nelson, it can be concluded that political participation involves activities aimed at influencing government decisions, without any limitations regarding the form, nature, or results of such participation. In this definition, there are four main points. First, participation includes concrete activities and does not include political attitudes or orientations. Second, participation involves ordinary citizens or individuals as actors, not political figures or government officials. Third, participation is only related to activities aimed at influencing government decision-making. Fourth, participation includes all activities that have the aim of influencing the government, regardless of whether the

¹⁵ Robert Alan Dahl, *Perihal Demokrasi: Menjelajahi Teori Dan Praktek Demokrasi Secara Singkat* (Jakarta: Yayasan Obor Indonesia, 2001).

¹⁶ Saifudin, *Partisipasi Publik Dalam Pembentukan Peraturan Perundang-Undangan* (Yogyakarta: FH UII Press, 2009).

¹⁷ Samuel Philips Huntington, *Partisipasi Politik Di Negara Modern* (Jakarta: Rineka Cipta, 1990).

¹⁸ Kenneth A. Rasinski, *Political Behavior Annual* (Colorado: Westview Press, 1986).

activity has a real impact or not. Understanding the definition of political participation that includes these four main points basically emphasizes the importance of active community participation in every government decision-making process. This is based on the desire of the community to achieve self-government in participatory democracy. In this framework, political participation is a guarantee that must be given to the people so that they can be involved in the administration of the state and access various public policies freely and openly, as a manifestation of the ideal people's sovereignty in participatory democracy. There are several basic principles that support the realization of political participation in the administration of government, namely: 1) guaranteed access; 2) equality; 3) freedom of expression; 4) the concept of public interest; 5) the ideals of democracy.

In legal regulations, both at the level of laws and implementing regulations, there are no articles that expressly regulate community participation in the recruitment process for acting regional heads. In fact, in the recruitment process for acting regional heads, the provincial and district and city DPRD are not given the authority to provide considerations as representatives of the regional community. This can be seen in Article 86 paragraph (2) and (3) of Law No. 23 of 2014, which reads:

(2) Apabila gubernur diberhentikan sementara dan tidak ada wakil gubernur, Presiden menetapkan penjabat gubernur atas usul Menteri.

(3) Apabila bupati/walikota diberhentikan sementara dan tidak ada wakil bupati/wakil walikota, Menteri menetapkan penjabat bupati/walikota atas usul gubernur sebagai wakil Pemerintah Pusat.

(2) If the governor is temporarily dismissed and there is no deputy governor, the President appoints an acting governor upon the Minister's recommendation.

(3) If the regent/mayor is temporarily dismissed and there is no deputy regent/deputy mayor, the Minister appoints an acting regent/mayor upon the governor's recommendation as the representative of the Central Government.

From these provisions, it can be concluded that in the process of appointing acting regional heads, there is no room for participation given to either the DPRD or the community directly. The appointment of acting regional heads is the prerogative of the President for acting governors, and the prerogative of the Minister of Home Affairs for

acting regents and mayors. The recruitment and appointment mechanism for acting regional heads is elitist and non-transparent because the process involves the central elite and does not involve the people's representative council as representatives of the people or the community directly. In fact, the DPRD and the local community are the parties directly affected by the appointment of acting regional heads.

According to the author, participation has an important role in influencing government policy to be in accordance with the will of the people as holders of sovereignty. However, with the recruitment and appointment mechanism for acting regional heads that is elitist and determined only by the President and the Minister of Home Affairs, the local community as the party directly affected has no control in determining their leader. This is detrimental to the local community because they are led by someone who is not their own choice, and there is the potential that the leader will side more with the central government than the local community. The involvement of the central government in appointing acting regional heads without any space for participation for local communities has resulted in strong dominance of the central government over acting regional heads.

According to the author, limiting the participation of local communities in determining acting regional heads as regional leaders is a violation of democratic values in Indonesia. Public participation in governance is the core of a democratic state, which creates a harmonious relationship between acting regional heads and local communities. Haggard and Kaufman's opinion on "weak democracy syndrome" is also relevant in this context, where they state that there are three factors that can cause a decline in the quality of democracy and encourage authoritarianism, one of which is the limitation of space and access for civil society.¹⁹

The involvement of the community in the appointment of regional heads is a constitutional mandate that affirms the principle of people's sovereignty as one of the main pillars in the state system. Article 1 paragraph (2) of the 1945 Constitution explains this clearly. In addition, community participation is also recognized as a constitutional right of

¹⁹ Idul Rishan, *Hukum Dan Politik Ketatanegaraan* (Yogyakarta: FH UII Press, 2020).

citizens, as stated in Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution. These articles provide citizens with the opportunity to be involved in government, including in determining leaders or regional heads. Therefore, government actions, both by the President and the Minister of Home Affairs, which do not provide space for community participation in the process of appointing regional heads, constitute a violation of the principle of people's sovereignty and the constitutional rights of citizens to be involved in the government process, as guaranteed in the 1945 Constitution.

2. Public Legitimacy of the Appointment of Acting Regional Heads.

The understanding of legitimacy in the context of practical politics sometimes experiences a narrowing of meaning. In some cases, the term legitimacy is only interpreted as recognition. For example, the term legitimacy is used to indicate support from central political party administrators for their candidates in regional head elections, or a regional head candidate who claims to have legitimacy from certain areas in his electoral district.²⁰

In fact, the term legitimacy in the context of politics has a very broad meaning. The word "legitimacy" comes from the Latin "legitim" or "lex" which means law. In a broader sense, legitimacy refers to the legality of power and authority. Legitimacy cannot be separated from the concept of power, where power creates institutionalized authority or authority. This authority or authority can be considered legitimate through legitimacy.²¹ Not everyone has legitimate authority, because such authority is related to public office. Therefore, it is important to achieve strong legitimacy in the recruitment process of political officials or public officials, including in the appointment of acting regional heads. Strong legitimacy is an important factor in gaining public trust in appointed officials.

According to Andrew Heywood, the term "legitimacy" has a broad meaning as "legitimate" in a political context. Legitimacy gives an authoritative or binding character to an order or command, which turns power into authority. Political philosophers consider

²⁰ Joko. J. Prihatmoko, *Pemilihan Kepala Daerah Langsung: Filosofi, Sistem Dan Problema Penerapan Di Indonesia* (Yogyakarta: Pustaka Pelajar, 2005).

²¹ Franz Magnis Suseno, *Etika Politik: Prinsip-Prinsip Moral Dasar Kenegaraan Modern* (Jakarta: Gramedia, 1987).

legitimacy as a moral or rational principle that is the basis for the government to demand obedience from citizens. In fact, recognition of legitimacy is considered more important than obedience itself. However, legitimacy is not a single dimension, but in a sociological perspective, legitimacy is influenced by the willingness of citizens to obey political power. Thus, the position of citizens or society has an influence on legitimacy itself.

David Beetham argues that power and authority can be considered legitimate if they meet three main conditions. First, power must be obtained and implemented in accordance with established rules, either in the form of formal law (statutes) or informal conventions. Second, these rules must be mutually accepted by both the government as the governing party and the people as the governed party. Third, legitimacy must be testable and proven through expressions of agreement from the people as the recipients of the power. David Beetham argues that power and authority can be considered legitimate if they meet three main conditions. First, power must be obtained and implemented in accordance with established rules, either in the form of formal law (statutes) or informal conventions. Second, these rules must be mutually accepted by both the government as the governing party and the people as the governed party. Third, legitimacy must be testable and proven through expressions of agreement from the people as the recipients of the power.

Beetham also stated that there are two important characteristics in the legitimacy process. First, there is a competitive election and competition as a mechanism by which the people's agreement can be realized. In other words, every process of selecting or appointing political or public officials must involve the consent of the people. Second, there are constitutional rules that broadly reflect the people's expectations about how the government should be run.²²

According to the explanation, to maintain the legitimacy of government, it is important for the process of selecting or appointing public officials to be carried out transparently and there must be approval from the people. In addition, these public officials must also carry out their duties in accordance with the hopes and desires of the people.

²² Andrew Heywood, *Political Ideologies an Introduction* (London: Palgrave, 2017).

Therefore, if the process of selecting and implementing government does not involve the participation of the people as the giver of legitimacy, then the government can be considered illegitimate.

According to Franz Magnis Suseno, there are three criteria in legitimacy. First, there is legal legitimacy or legality, which means that legitimacy is based on the rules or laws used to guarantee legitimacy. Legal legitimacy comes from formal legal rules established by the government. Second, there is sociological legitimacy, which is related to the motivational factors that make society accept the power of government. Simply put, sociological legitimacy depends on the recognition and acceptance of the government by society. Third, there is ethical legitimacy, which is accepted based on applicable moral norms. Ethical legitimacy is inseparable from sociological legitimacy, because it questions the legitimacy of government based on the moral norms of the state. Thus, ethical legitimacy becomes the normative basis for sociological legitimacy.²³

According to the author, it is important for legitimacy in the appointment of acting regional heads to cover all three aspects of legitimacy, namely legal legitimacy, sociological legitimacy, and ethical legitimacy. This is because legitimacy does not only function as recognition. More than that, legitimacy is a principle that allows values and morals in the legal, moral, and social dimensions to be realized together. Therefore, these three aspects cannot be selected separately, but must complement each other. In the context of the appointment of acting regional heads, legitimacy that includes legal, moral, and social dimensions is an important prerequisite for carrying out the duties and authorities inherent in the position.

The provisions contained in Article 86 paragraph (2) and (3) of Law No. 23 of 2014 relate to the legitimacy of appointing acting regional heads. The article reads:

(2) Apabila gubernur diberhentikan sementara dan tidak ada wakil gubernur, Presiden menetapkan penjabat gubernur atas usul Menteri.

²³ Suseno, Op.Cit.

(3) Apabila bupati/walikota diberhentikan sementara dan tidak ada wakil bupati/wakil walikota, Menteri menetapkan penjabat bupati/walikota atas usul gubernur sebagai wakil Pemerintah Pusat.

(2) If the governor is temporarily dismissed and there is no deputy governor, the President appoints an acting governor upon the Minister's recommendation.

(3) If the regent/mayor is temporarily dismissed and there is no deputy regent/deputy mayor, the Minister appoints an acting regent/mayor upon the governor's recommendation as the representative of the Central Government.

Based on the above regulations, neither the DPRD nor the local community has the authority to give approval for the appointment of Acting Regional Heads. This authority is only given to the President and the Minister of Home Affairs. However, to gain legitimacy, the appointment of Acting Regional Heads should obtain approval from the community and meet the criteria for legitimacy in terms of law, morals, and social. This raises the question of whether the appointment of Acting Regional Heads during the transition period of the 2024 national simultaneous regional elections has legitimacy from the community.

The author argues that to assess the legitimacy of the community in the appointment of Acting Regional Heads, it cannot be separated from the principle of democracy. This claim states that the legitimacy or legitimacy of public or government officials cannot be separated from the democratic dimension in their recruitment process. The relationship between democracy and legitimacy gives rise to three main elements to measure whether a public or government official is considered legitimate or not.

First, community approval is very important. Although the community does not explicitly give collective approval, their approval can be seen through participation in the process of formulating and determining policies, including the determination of the Acting Regional Head. Community participation will influence their approval because they can see and know directly the political process that is taking place, and they have the freedom to express their approval or rejection. In addition, the community's response to the political process, whether through demonstrations or other actions that reflect their preferences, can also be an indicator of community approval.

Second, the existence of a process of compromise, conciliation, and/or negotiation between the government, the representative council, and the community directly is an important factor. This process can occur either through individual representatives or through community organizations.

Third, the suitability between the input provided by the community and the output produced by the government is also important. In this case, there is a match between the proposals desired by the community and the decisions taken by the government. Regarding the appointment of the Acting Regional Head, this suitability can be seen from the extent to which the candidates proposed by the region are in accordance with the Acting Regional Head who is appointed by the government, either by the President or the Minister of Home Affairs.

From the explanation above, it can be concluded that legitimacy cannot be separated from the principle of democracy. In the context of appointing an Acting Regional Head, the validity of the appointment depends on the approval of the local community. If the appointment of an Acting Regional Head is desired by the local community, then it can be said to be valid. However, if the appointment of an Acting Regional Head and the implementation of his duties are contrary to the wishes of the community, then it cannot be considered valid even though it legally complies with applicable regulations. In this case, legitimacy from the moral and social dimensions is also important, not only from the legal dimension. Although an appointment of an Acting Regional Head can be considered legally valid because it follows applicable regulations, if it does not receive legitimacy from the community in terms of morals and socially, then the validity of the appointment is questionable. It is important to remember that legal, moral, and social legitimacy do not stand alone, but are interrelated and are cumulative factors in determining the legitimacy of a government or public official.

According to the author, a government that does not have legitimacy can only be maintained through intimidation and violence. This shows that democracy functions as a control to prevent authoritarianism by the government. Therefore, the legitimacy of

government has a dimension related to democracy, where every rule, process, and implementation of power must be balanced with democratic participation from the community. This view is in line with Rousseau's opinion, who argued that government only has legitimacy if it is carried out in accordance with the general will. Aristotle also stated that a government that is considered to have legitimacy is a government that acts solely in the interests of the entire community, not in the interests of the ruler.²⁴

3. Appointment of Acting Regional Heads according to *Maslahah Mursalah*

Maslahah murlahah, according to al-Ghazali, refers to a general good that is not specifically explained by sharia propositions that can justify or cancel it. This concept is used as a method for determining law in dealing with *muamalah* (social relations) problems by considering the benefits that can be obtained or to avoid loss or damage.²⁵

In the context of Islam, the issue of acting regional heads is not yet explicitly known in the treasury of Islamic sciences, especially in Islamic government science. This is because previous scholars have not specifically discussed it. In addition, acting regional heads are also not directly mentioned in the Qur'an and Hadith. The absence of specific evidence in the Qur'an and Hadith causes legal uncertainty regarding the status of acting regional heads. Therefore, this issue does not have clear legal certainty.

In the study of Islamic law, not all issues that occur in society have clear evidence in the Qur'an and Hadith. Therefore, the legal *istinbat* method that can be used is through *ijma'* (agreement) of scholars using several *ushul fiqh* methods, one of which is *maslahah mursalah*. The principle of finding law in Islam regarding issues that do not have specific legal evidence is that if the issue is considered to provide benefits or advantages, then it can be used or at least used as a basis for the existence of the issue. This also applies in the context of constitutional and political law, where there are several new issues that have never been mentioned or included in the text, such as the problem of acting regional heads.

²⁴ Heywood, Op.Cit.

²⁵ Syarif Hidayatullah, "Maslahah Mursalah Menurut Al-Ghazali," Jurnal Al-Mizan 116, no. 2 (2018).

In this analysis, the author uses the theory of *maslahah mursalah* to determine the position of acting regional heads and their impacts. In the author's opinion, the problem related to acting regional heads is included in the type of *maslahah al-'ammah*, namely the general good related to the interests of many people. However, this good does not mean the interests of all individuals but can be the interests of the majority or most of the society. In this case, the problem of acting regional heads is felt by the community in the area where there are acting regional heads, because they are the ones who lead the region during the transition period towards the 2024 simultaneous regional elections.

Furthermore, in the context of the priority of its use, acting regional heads are included in the category of *maṣlaḥah al-ḥājiyah*, namely the good that is needed to perfect the previous basic (fundamental) good. This category focuses on relief to maintain and safeguard basic human needs, or in other words, overcome the various difficulties faced by society.²⁶ Leadership in a country is fundamental and important for society. In Surah An-Nisa' verse 59 in the Al-Qur'an, it is explained that Muslims are not only obliged to obey Allah, His Messenger, and the *tabi'in* or ulama, but also to their leaders. The verse reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۗ ذَٰلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

“O you who believe! Obey Allah and obey the Messenger (Muhammad), and Ulil Amri (the authority) among you. Then, if you differ in opinion about something, then return it to Allah (the Qur'an) and the Messenger (His Sunnah), if you believe in Allah and the Last Day.”

The value of obedience to a leader is not given absolutely or unconditionally. Some scholars interpret that obedience only applies to a just leader who provides welfare for his people.

The beneficial side of the existence of the acting regional head is to fill the power vacuum, as it is known that the power vacuum must be addressed immediately because if left empty there is no one to control a government. But the detrimental side is greater than the beneficial side, because the acting regional head is less democratic in its determination

²⁶ Asy-Syatibi, *Al-Muwafaqad Fi Ushul al-Syar'iyah, Juz II* (Beirut: Dar al-Ma'rifah, 1997).

as discussed in the previous sub-chapter that the acting regional head does not include community participation in the recruitment process and also does not have the legitimacy that should be to become a democratic leader, because it only has legal legitimacy but does not have social and moral legitimacy. This can trigger chaos in society because they are led by people who are not their choice and do not know the area they are leading well.

Therefore, a basic principle (qawa'id al-asasiyah) applies which states that taking benefits and eliminating harm:

الم فاسد درء و الم صالح جلب

Meaning: Attracting benefit or benefit and rejecting damage or harm.²⁷

The rule can be used in the case of acting regional heads. In this case, drawing benefits can be interpreted as filling a power vacuum. While the undemocratic process of someone becoming acting regional head and the chaos that may occur is a harm that must be avoided. With the consideration of rejecting the damage caused by the existence of acting regional heads, another rule applies which reads:

درء المفسد مقدم على جلب المصالح

Meaning: Preventing harm is preferred over seeking benefit.²⁸

Through the above rules, it can be understood that if the acting regional head has a benefit as referred to in the explanation above, namely to fill the power vacuum, but this benefit is abandoned by prioritizing the rejection of the harm that arises in society, such as the undemocratic recruitment process for acting regional heads which can have an impact on the decadence of democratic values in Indonesia, the lack of legitimacy of acting regional heads where social and moral legitimacy is not fulfilled, and the fear of chaos in society.

Furthermore, there is a rule of *ushul fiqh* which states:

²⁷ Abdul Karim Zaidan, *Al-Madkhal Li Dirasah al-Syari'ah al-Islamiyah* (Kairo: Dar Umar bin al-Khattab, 2001).

²⁸ Atjep Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Jakarta: Kencana Prenada Media Group, 2019).

إذا تعارضت المصلحة والمفسدة قُدِّم أرجحهما

Meaning: If the benefits and harms conflict with each other, then take the strongest one.²⁹

It is known that regarding the appointment of acting regional heads there are both benefits and harms. The benefit is to fill the power vacuum, and the harm is the negative impact on democracy, in accordance with the rule above to take the strongest, in this case the harm from the appointment is greater than the benefit arising from the appointment of an acting regional head. So, it is more important to avoid harm.

Therefore, rejecting the harm is preferable than taking advantage of the benefit because the harm will have a greater impact on society. So, from *Maslahah Murlah's* point of view, acting regional heads have both benefits and harms, but the harm is greater. So, with the concept of benefit in *Maslahah Mursalah*, the current acting regional head is not in accordance with the goal of *Maslahah Mursalah*, namely benefit.

Conclusion

Based on the description that has been explained regarding the Implications of the Appointment of Acting Regional Heads for Democracy in Indonesia from the *Maslahah Mursalah* Perspective, the following conclusions can be drawn:

1. The acting regional heads regulated in Law Number 10 of 2016, where the acting regional heads exist because they are to fill the power vacuum caused by the 2024 simultaneous regional elections, have implications for the quality of democracy in Indonesia, namely the decadence of democratic values, because in practice the acting regional heads are not democratic, where there is no community participation in the recruitment process for acting regional heads and the lack of legitimacy for acting regional heads because they only have legal legitimacy, while there is no moral and social legitimacy.
2. In *Maslahah Mursalah's* view of the implications caused by the existence of acting regional heads, it was found that acting heads have benefits and disadvantages, *Maslahah Mursalah* which emphasizes the aspect of benefits or

²⁹ Ibid.,

advantages and avoids disadvantages, because the aspect of acting regional heads is more dominant in terms of disadvantages, namely the undemocratic recruitment process and the lack of legitimacy of acting regional heads which have bad consequences for the quality of democracy in Indonesia, and this is a setback for the history of democracy in Indonesia, then there is concern.

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