

REGIONAL HEAD OFFICIAL APPOINTMENT MECHANISM DURING THE CONDITIONAL REGIONAL HEAD ELECTION TRANSITION PERIOD

Saparuli¹, Punta Yoga²
^{1,2}IBLAM College of Law, Jakarta, Indonesia
saparuli7@gmail.com¹, puntayoga@iblam.ac.id²



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Abstract: After the Decision of the Constitutional Court Number 14/PUU-XI/2013, ordered the General Election and Pilkada to be carried out simultaneously. since then simultaneous regional elections nationally and all aspects of its implementation have begun to be established in stages, based on Article 201 of Law no. 10 of 2016 will be implemented in 2024. This is the basis for legitimacy for the central government to appoint acting regional heads in taking control of local government. As a consequence of the implementation of the simultaneous local elections in 2024, there will be a vacancy in the post of Regional Head whose term of office expires in 2022 and 2023. Filling in positions is an important element in constitutional law. Without being filled in by officials, the functions of the follow-up position may be carried out as they should. The government needs to consider making implementing regulations, the mechanism for appointing Acting (Pj) regional heads and their authority is clear so that the appointment of these officials does not ignore democratic principles and at the same time provides guarantees for the community. This research is to find out the mechanism for the appointment and authority of Acting (Pj) Regional Heads during the simultaneous local election transition period. Normative legal research methods using statutory approaches (Statute Approach) and conceptual approaches (Conceptual Approach). The results of the study show that the Acting (Pj) is the definitive replacement for the regional head when there is a vacancy in the positions of the regional head and deputy regional head simultaneously during the simultaneous Pilkada transition period. The Acting Governor is appointed by the President through the proposal of the Minister of Home Affairs while the Acting Regent/Mayor is determined by the Minister of Home Affairs.

Keywords: Simultaneous local elections, Acting Regional Head, Authority

I. INTRODUCTION

After the fall of the New Order government in Indonesia (1998), comprehensive reforms (including constitutional reform) were called for. One of the aspirations that developed in this reform era was legal reform to achieve the supremacy of the legal system under the constitutional system, which plays the role of an effective basic reference in the process of administering the state and daily life. In order to achieve an effective legal system, the restructuring of legal institutions is supported by continuous improvement in the quality of human and cultural resources as well as legal awareness of the community, accompanied by legal material that is structured in a harmonious manner and continuously updated according to development needs.¹

The current wave of post-reform democratization is occurring not only at the national level, but also at the regional level with the introduction of direct elections. Direct elections are actually also influenced by the application of the principle of separation of powers. In fact, decentralization has opened up space for the growth and development of democratization in various regions.² The history of political configurations in Indonesia shows that there have been alternating ups and downs and ups and downs between democratic and authoritarian.³

The implementation of regional head elections is listed in the constitution of the 1945 Constitution of the Unitary State of the Republic of Indonesia (1945 Constitution). Article 18 Paragraph (4) of the 1945 Constitution has mandated that: "Governors, Regents and Mayors respectively as heads of provincial, regency and city regional governments are democratically elected". These provisions only imply that the heads of regional administrations including governors, regents and mayors are democratically elected, but do not specifically have to be directly elected by the people.⁴

These provisions provide a very solid foundation for Indonesia to become a constitutional democracy, so that public participation in administering government is the main requirement, especially in filling public positions. The provision also expressly gives rights to the people to decide and elect their leaders.⁵

The legal basis for the government in carrying out the election process for regional heads that are democratic and directly elected by the people is then regulated in the provisions of Article 1 Number 1 Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Laws Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Law, which expressly states that the Election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors, hereinafter referred to as Elections, is the implementation of people's sovereignty in the provinces and regencies/cities to elect Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors directly and democratically.⁶

As stipulated in Article 201 paragraphs 8 to 11, Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015

¹Ni'matul Huda, *State Institutions in the Transition of Democracy*, (Yogyakarta; UII Press, 2007), p. 38.

²Ni'matul Huda and Imam Nasef, *Structuring Democracy and Elections in Post-Reform Indonesia*, (Jakarta: KENCANA Publishers, 2017), p. 225.

³Mahfud MD, *Legal Politics in Indonesia*, (Depok; Rajawali Press, 2020), p. 345.

⁴The 1945 Constitution of the Republic of Indonesia

⁵Ratnia Solihah and Siti Witianti, *Problems and Efforts to Realize Democratic Elections in Post-Reform Indonesia*, *Bawaslu Journal*, Vol. 3 No. 1, p. 13 (2017).

⁶Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws.

concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Constitution.⁷

So that the General Election Commission (KPU) has decided to carry out simultaneous voting in 2024, regional head elections (Pilkada) on Wednesday 27 November 2024. Pilkada is the election of governors and deputy governors, regents and deputy regents, as well as mayors and deputy mayors who will done simultaneously.⁸

One of the implications of implementing regional elections simultaneously nationally in 2024 is the polemic over the appointment of Acting (Pj) regional heads. The practice of abuse of authority and power in the appointment of Acting (Pj) regional heads often occurs. The appointment of Acting (Pj) Regional Heads has the potential to become a loophole for certain individuals to entrust their political interests. The politicization of the Civil Servants of the Regional Government of the State and the Politicization of Social Assistance to the community has become an open secret in every General Election and Pilkada.

At present the appointment of acting regional heads will continue throughout 2022 which includes 7 acting governors, 76 acting regents and 18 acting mayors. In 2023, there will be the appointment of 17 acting governors, 115 acting regents and 38 acting mayors. As a result, a total of 271 (50.9 percent) regional heads elected by the people in the elections were replaced by officials. This means that more than half of the 541 regional heads, ahead of the regional elections on November 27, 2024, hold the power of the central government, displacing the people's sovereignty.⁹

So far the appointment of regional heads has not heeded democratic principles regarding people's sovereignty, legal provisions regarding the election of public officials, as well as decency and public ethics. The government appoints regional head officials without transparency, does not involve formal leaders, people's representatives (DPRD), civil society, and regional autonomy stakeholders. Acting regional heads are appointed by the Ministry of Home Affairs, the Ministry of Administrative Reform and Bureaucratic Reform, the Ministry of State Secretariat, as well as the State Civil Service Agency and the State Intelligence Agency.¹⁰

In addition, the term of office of the Acting Regional Head (Pj) is also very long, namely until the implementation of the simultaneous regional elections on November 27, 2024, plus some time for determination by the Regional General Election Commission (KPUD) and preparations for inauguration. This does not include if there is a lawsuit from the losing candidate in the Constitutional Court (MK). Thus, the total term of office for several Acting (Pj) regional heads can reach 2.5 years or even more. Never before in the history of the Indonesian government, an Acting regional head has a very long term of office.¹¹

On September 14, 2022, the Minister of Home Affairs issued a Circular of the Minister of Home Affairs Number 821/5492/SJ concerning the Approval of the Minister of Home Affairs for Acting/Temporary Acting Regional Heads in the Personnel Aspect of Regional

⁷Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws.

⁸Rais Agil Bahtiar, The Need for Officials in Filling the Vacant Positions of Regional Heads. Research Center for the DPR RI Expertise Agency. Vol. XIV, No. 8/II/Puslit/April/2022.

⁹Azyumardi Azra, Democracy, Law and Acting Regional Head, 28 July 2022. <https://www.uinjkt.ac.id/demokras-Hukum-dan-penjuang-head-area/> accessed on 2 September 2022.

¹⁰Ibid

¹¹Eko Prasajo, Legitimacy of Acting Regional Heads, 10 May 2022. <https://fia.ui.ac.id/legitimasi-penjuang-head-area/> accessed on

Apparatuses. This received opposition from various academics and politicians. This is because in points 4 a and b, the point is to increase the authority of the acting regional head.¹²

II. RESEARCH METHODS

The type of legal research used by the author is a type of normative legal research using statutory approaches (Statute Approach) and conceptual approaches (Conceptual Approach). Normative legal research, namely library law research.¹³The statutory approach (Statute Approach) is an approach in normative legal research by examining all provisions of laws and regulations that are related to the legal issues to be studied.¹⁴The statutory approach is used if it is known that there is a conflict in legal norms, whether it is a vertical or horizontal conflict in statutory regulations.¹⁵Normative legal research is carried out by researchers by not departing from existing legal rules, because there are not yet or there are no specific legal rules related to what is being faced.¹⁶So it is necessary to establish new laws and regulations because it is considered important to see the development of the situation that requires it.¹⁷

III. RESEARCH RESULT

1. Mechanism for the Appointment of Acting (Pj) Regional Heads During the Transition Period for Simultaneous Regional Head Elections

The existence of regional heads is related to the principle of decentralization adopted by a unitary state because decentralization will give birth to autonomous regions where these autonomous regions are led by autonomous regional heads. Thus the position of the regional head can be understood as the position of the head of the local government contained in a unitary state which is obtained as a consequence of the implementation of the principle of decentralization.¹⁸The Regional Head is a position environment that leads the implementation of Regional Government. According to Logeman, a position is a function in a public organization called the state. Where this function is a detailed work environment in the overall series (organization).¹⁹

Whereas after the Decision of the Constitutional Court Number 14/PUU-XI/2013 which ordered the holding of legislative (Members of DPR, DPD and DPRD) and executive (President and Vice President) elections to be carried out simultaneously starting in 2019 has prompted legislators to redesign the implementation elections, including regional elections.²⁰Furthermore, through Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors, the government stated that the formation of Law Number 22 of 2014 concerning the Election of Governors, Regents and Mayors which regulates the mechanism for selecting regional heads indirectly through the Regional People's Legislative Council has received widespread rejection by the people because the decision-making process does not reflect democratic principles which were later enacted

¹²Circular Letter of the Minister of Home Affairs Number 821/5492/SJ concerning the Approval of the Minister of Home Affairs to Acting Task Force/Officers/Temporary Acting Heads of Regions in the Personnel Aspects of Regional Apparatuses.

¹³Soejono Soekanto & Sri Mamuji, Normative Legal Research, A Brief Overview, PT. Raja Grafindo, Jakarta: 2003, p. 23.

¹⁴Dyah Ochtorina Susanti & A'an Efendi, Legal Research, Sinar Graphic, Jakarta: 2014, p. 110.

¹⁵I Made Pasek Diantha, Normative Legal Research Methodology in Justifying Legal Theory, Pranadamedia Group, Jakarta: 2019, p. 156.

¹⁶Peter Mahmud Marzuki, Legal Research, Prenada Media Group, Jakarta: 2005, p. 137.

¹⁷Op. Cit, page 159

¹⁸Dian Bakti Setiawan, Dismissal of Regional Heads: Mechanisms for Dismissing According to the Indonesian Government System, Rajawali Press, Jakarta: 2011, p. 80

¹⁹Dian Bakti Setiawan, Dismissal of the Regional Head, Rajawali Press, Depok: 2017, p. 25.

²⁰Constitutional Court Decision Number 14/PUU-XI/2013

into Law through the Law of the Republic of Indonesia Number 1 of 2015 concerning Stipulation of Government Regulations in lieu of Law Number 1 of 2014 concerning The Election of Governors, Regents and Mayors Becomes Law.²¹

Furthermore, Article 3 paragraph (1) of Law no. 1 of 2015 stipulates that "Elections are held once every 5 (five) years simultaneously throughout the territory of the Unitary State of the Republic of Indonesia." Because of that, since then the simultaneous regional elections nationally and all aspects of its implementation have begun to be determined in stages, from what was originally planned to be held in 2027, then based on Law no. 10 of 2016 changed to November 2024.²²

As a consequence of the cancellation of the simultaneous local elections in 2027, there is a vacancy in the position of Regional Head whose term of office expires in 2022 and 2023. Based on data obtained from the Ministry of Home Affairs, 101 regional heads will end their term of office in 2022 and 171 regional heads will terminate term of office in 2023.²³

If we look at the considerations of the Constitutional Court in its decision, at least three things can be found as the main considerations. The first is regarding the relationship between the electoral system and the presidential system of government, the second is related to the original intent of establishing the 1945 Constitution, and the third is the effectiveness and efficiency of holding elections and the right to vote for citizens intelligently.²⁴ Whereas in its development related to the simultaneous design of holding general elections, the Constitutional Court in its Decision of the Constitutional Court Number 55/PUU-XVII/2019, has provided a number of options for the simultaneous general election model which can still be considered constitutional, as follows:²⁵

1. Simultaneous general elections to elect members of the DPR, DPD, President/Vice President, and DPRD members;
2. Simultaneous general elections to elect members of the DPR, DPD, President/Vice President, Governors and Regents/Mayors;
3. Simultaneous general elections to elect members of the DPR, DPD, President/Vice President, DPRD members, Governors and Regents/Mayors;
4. National simultaneous elections to elect members of the DPR, DPD, President/Vice President; and some time after that simultaneous local elections were held to elect members of the Provincial DPRD, members of the Regency/Municipal DPRD, governors and regents/mayors;
5. National simultaneous elections to elect members of the DPR, DPD, President/Vice President; and some time after that a simultaneous provincial general election was held to elect members of the Provincial DPRD and elect a governor; and then some time after that simultaneous district/city general elections were held to elect members of the Regency/Municipal DPRD and elect the Regent and Mayor; And
6. Other options as long as maintaining the simultaneous nature of general elections to elect members of the DPR, DPD, and the President/Vice President.

²¹vide 3rd Paragraph General Explanation of Law 1/2015

²²Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws

²³Ahmad Gelora Mahardika, Sun Fatayati, Ferry Nahdian Furqan, "Juridical Problems Filling in Acting Regional Heads in the Indonesian State Administration System," *Legacy: Journal of Law and Legislation* Vol 2 No 2 - August 2022. Pg. 26.

²⁴Abdul Basid Fuadi, *Legal Politics of Simultaneous Election Arrangements*. *Journal of the Constitution*, Volume 18, Number 3, September 2021.

²⁵Constitutional Court Decision Number 55/PUU-XVII/2019

Whereas with the availability of various possibilities for implementing simultaneous general elections as stated above, the determination of the chosen model becomes the territory for legislators to decide on. However, in deciding on the choice of model for the simultaneous holding of general elections, legislators need to consider a number of things, among others, namely:

- 1) the selection of a model that has implications for changes to laws is carried out with the participation of all parties who have an interest in holding general elections;
- 2) the possibility of changes to the law on the choice of models made earlier so that there is time for simulations to be carried out before the changes are actually implemented effectively;
- 3) legislators carefully take into account all the technical implications of the available model choices so that their implementation remains within the limits of reasonable reasoning, especially to realize quality general elections;
- 4) the choice of model always takes into account the convenience and simplicity for voters in exercising their right to vote as a form of exercising people's sovereignty; And
- 5) not frequently changing the model of direct elections which are held simultaneously so as to build certainty and stability in the implementation of general elections.

Simultaneous regional heads are essentially an idea developed by the state with the reason that the implementation of simultaneous regional elections is seen as more efficient in terms of the implementation budget and is intended so that social, political and governance stability is not too often disrupted by political escalation from the continuous implementation of regional elections.

During his leadership, the position of Regional Head was limited by laws and regulations. Indonesia itself already has a rule that regional heads carry out their functions as leaders of regional government, namely for 5 (five) years after that there will be a vacancy due to the end of the term of office determined by laws and regulations and can continue for the same period. . After that, the replacement of Regional Heads will be carried out simultaneously in all regions in Indonesia which aims to increase budget efficiency in the implementation of Regional Head Elections (Pilkada).²⁶

The holding of the 2024 Simultaneous Elections and the appointment of acting regional heads are based on the provisions in the Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors Become Laws The provisions of Article 201 are amended so that they read as follows:²⁷

- (8) *National simultaneous voting in the Election of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor throughout the territory of the Unitary State of the Republic of Indonesia will be held in November 2024.*
- (9) *To fill the vacancy in the positions of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor whose term of office ends in 2022 as referred to in paragraph (3) and whose term of office ends in 2023 as referred to in paragraph (5), an acting Governors, acting Regents and acting Mayors until the election of Governors and Deputy Governors, Regents*

²⁶Nandang Alamsah Deliarnoor, Problems of Task Executors (Plt) in Government Transitional Periods (Pre and Post Pilkada Simultaneous), Journal of Governance Science, Volume.1, Number.2, October 2015, p. 324.

²⁷Article 201 of the Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws

and Deputy Regents, as well as Mayors and Deputy Mayors through simultaneous national elections in 2024.

- (10) *To fill the vacancy in the position of Governor, an acting Governor is appointed from the position of middle high leadership up to the Governor's inauguration in accordance with the provisions of the legislation.*
- (11) *To fill the vacancy in the position of Regent/Mayor, acting Regent/Mayor are appointed from high leadership positions up to the inauguration of Regent and Mayor in accordance with statutory provisions.*

The provisions of the article above are the basis for legitimacy for the central government to appoint acting regional heads in taking control of the regional government. This means that if regional head elections are held simultaneously in 2024, then the regions whose term of office has ended in 2022 and 2023 will be required to be taken over by an interim official. Thus extending the length of time given to interim officials. The dismissal of the definitive regional head is replaced by a temporary regional head to avoid a vacancy in the regional head position. The appointment of acting regional heads raises several problems in a legal aspect, because temporary officials are different from definitive ones.

So this is a concern, meaning that the extension of the president's power will lead the regions that should be led by regional heads directly elected by the people. The existence of a temporary acting regional head with a sufficiently long term is also not in line with the concept of regional autonomy, one of which is to give the people the opportunity to directly elect their regional heads.

The filling of positions is one of the important elements in constitutional law. Without being filled with officials, the functions of the follow-up positions may be carried out as they should. According to Bagir Manan, the definition of position is a permanent work environment that contains certain functions which as a whole reflect the goals and work procedures of an organization. The state contains various kinds or fixed work environments with various functions to achieve the goals of the state. In other words, a position is a permanent work environment held and carried out for the benefit of the state. While Officials are people or individuals (*natuurlijkeperson*) with certain requirements and procedures determined to occupy a position. This official will act on behalf of the position he represents.²⁸

As stipulated in the Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws, article 201 paragraph (10) and (11) it is stipulated that; "To fill the vacancy in the position of governor, acting governors are appointed from middle high leadership positions up to the inauguration of the governor and to fill the vacancies in the positions of regents/mayors, acting regents/mayors are appointed from senior high leadership positions up to the inauguration of regents and mayors according to with the provisions of the legislation".

From these legal provisions, based on administrative law, the position of governor, regent or mayor is structurally the executor of the mandate of the President or the Minister of Home Affairs, so in this case the Minister of Home Affairs has the authority to decide on the appointment of governors, regents or mayors. The appointment of acting regional heads has been carried out for certain reasons. In its implementation, the appointment of regional heads

²⁸Fabian Riza Kurnia & Rizari, Op. Cit, p. 86.

is carried out by the Minister of Home Affairs, not directly carried out by the governor or regional official in authority.²⁹

Discussions regarding "officials" will always be related to the term "officials" itself. Officer means a person who has a position or a person who holds a position or rank. So people who hold positions are called officials, while people who only serve in that position temporarily are called "actors". Aims to fill the vacant regional head position as a result of the implementation of the Simultaneous Pilkada for the government to appoint Acting (Pj) regional heads.

The Directorate of Facilitation of Regional Heads, DPRD and Inter-Institutional Relations (FKDH) along with ties among them the Directorate General of Regional Autonomy of the Ministry of Home Affairs stated that the differences in the terms Plt, Acting, Plh and Acting Regional Heads are:³⁰

- a. Acting (Pj), determined in article 201 of Law no. 10 of 2016. At the end of his term of office, at the same time the regional head was not on campaign leave, until the actual appointment of the regional head, the position of Regional Head of mid-high leadership for the Acting Governor and the position of high-ranking pratama for the Acting Regent/Mayor.
- b. Pjs, based on Article 70 of the Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws.
- c. Plt, for the Deputy Governor, Deputy Regent and Deputy Mayor if the Governor, Regent and Mayor are temporarily unavailable in the area. Affirmed, the power of deputy regional heads is equivalent to regional heads.
- d. Plh is a position filled by the regional secretary (sekda), if the regional head's term of office is less than one month.

In order to be appointed as Acting Regional Head, one must meet the requirements and criteria as stipulated in Government Regulation Number 6 of 2005 Article 132 paragraph (1) "Acting Regional Head as referred to in Article 130 paragraph (3) and Article 131 paragraph (4), Appointed from civil servants who meet the requirements and criteria:³¹

- a. have experience in the field of government, as evidenced by a history of office.
- b. occupying an echelon I structural position with a grade rank of at least IV/c for Acting Governor and an echelon II structural position with a rank rank of at least IV/b for Acting Regent/Mayor.
- c. List of Assessment of Work Implementation for the last 3 (three) years at least has a good score.

The mechanism for filling these vacancies is stated in a number of regulations, including:

- 1) leave for important reasons, sick leave, and official duties at home and abroad. In a sense, the provisions in this Article are irrelevant to be applied in the case of filling the vacant regional head position as an implication of holding simultaneous regional elections.
- 2) Article 70 paragraph (3) Law Number 10 of 2016 The provisions in this article state

²⁹Suhaimi, Else, and M. Yasin. "Problematics of Filling Vacancies in Regional Head Positions". Journal of Tri Abstinence Law Vol. 8 No. 1 (2022).

³⁰Ministry of Home Affairs, Differences in the Terms Plt, Acting, Plh and Acting Regional Head. <https://www.kemendagri.go.id/index.php/blog/26257-Perbedaan-Istilah-Plt-Pjs-Plh-dan-Pj-Kepala-Daerah>. Retrieved August 31, 2022.

³¹Government Regulation Number 6 of 2005 concerning Election, Ratification, Appointment and Dismissal of Regional Heads and Deputy Regional Heads

that regional heads can apply for leave outside the state's responsibility if they are on a campaign. While on leave outside the state's responsibility, a temporary acting person appointed by the Minister is appointed. This norm is then regulated in more detail in the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2018 concerning Amendments to the Regulation of the Minister of Home Affairs Number 74 of 2016 concerning Leave outside the State's Dependence for Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Vice Mayor. In the context of filling the vacant regional head positions caused by simultaneous elections, the provisions in this article are also less relevant.

- 3) Article 201 of Law Number 10 of 2016 This article states that when the term of office is over and there is a vacancy in the position of head of a region in an area, filling is carried out with the criteria of acting governor coming from a mid-high leadership position. Meanwhile, to fill the vacancy in the position of regent or mayor, an Acting regent/mayor is appointed from a senior high leadership position. This is regulated in detail in Article 201 paragraph (10), paragraph (11) of Law Number 10 of 2016. This article also mandates that the filling must be based on statutory regulations.

The most relevant norm is Article 201 of Law Number 10 of 2016 in the context of filling the vacancy in the position of Regional Head due to simultaneous local elections. Referring to the three existing options, the Acting (Pj) concept based on Article 201 of the Pilkada Law is most suitable for the case of simultaneous regional elections. However, it is different from the arrangements regarding leave outside the state's responsibility, which has implementing regulations, namely the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2018. In addition, the regulations related to the election of Acting (Pj) regional heads in article 201 of the Pilkada Law do not yet have implementing regulations, either Government Regulations or Ministerial Regulations.

As an implication of the absence of norms that strictly regulate the mechanism for filling temporary Acting, the Constitutional Court then issued three decisions, among others:

- (1) MK Decision Number 67/PUU-XIX/2021
- (2) MK Decision Number 15/PUU-XX/2022
- (3) MK Decision Number 18 PUU/XX/2022

In the legal considerations of the three Constitutional Court Decisions it is stated that as a follow-up to Article 201 of Law Number 10 of 2016 it is necessary to consider the Government making Implementing Regulations, so that mechanisms and requirements are available that are measurable and clear that the filling of these officials does not ignore democratic principles and while at the same time providing assurance to the public that the mechanism for filling in positions is open, transparent and accountable in order to produce leaders who are competent, have integrity, are in accordance with regional aspirations and work sincerely for the people and regional progress.³²

Septa Dinata, a political observer at the Institute for Public Policy in Paramadina, believes that the appointment of temporary regional heads for hundreds of regional heads cannot be left entirely to the central government. This is because he estimates that it is not impossible for some people to take advantage of acting regional heads for political gain. Because if the appointed acting regional head will lead the region for up to 2 years or more before the simultaneous local elections in 2024. This has the potential to become transactional politics. The new government can implement it on the basis of the power it has

³²Op. cit.

obtained, meaning that in this case a person who is authorized by law is a legal subject, so he has the right to do what is regulated in that power.³³

Regional head is a political position, as well as the position of president. Therefore, the filling of acting regional heads also really needs to involve the political process in the regions, especially since the term of office of the acting regional head is not short. The involvement of political mechanisms in the region becomes even more important if we link it to the legitimacy of these officials. The determination of acting regional heads cannot be unilaterally monopolized by the central government without considering regional aspirations.³⁴

In Public Law, authority relates to power. The local government system is so closely related to the regional autonomy that is currently implemented in Indonesia. Previously, all government systems were centralized or centralized, so after the implementation of regional autonomy, it is hoped that the regions can regulate the life of the local government by optimizing the existing regional potential. Nevertheless, several matters are still regulated by the Central Government such as state financial affairs, religion, foreign relations, religion, foreign relations, and others.³⁵

Government Regulation Number 6 of 2005 and Government Regulation Number 49 of 2008 concerning the Election, Approval of the Appointment and Dismissal of Regional Heads and Deputy Regional Heads, as well as Minister of Home Affairs Regulation No. 74 of 2016 and Minister of Home Affairs Regulation No. 1 of 2018 concerning Unpaid State Leave for Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors are no longer in accordance with the development of conditions and the regime of simultaneous national regional elections. In addition to being non-transparent and non-participatory, the regulations mentioned above are inadequate because they only involve governors, the minister of home affairs,³⁶

The modern democratic state stands on the basis of the general agreement of the majority of the people about the ideal state building, state organizations are needed so that their interests can be protected or promoted through the formation and mechanism of the state.³⁷ As we often hear the adage "government of the people by the people and for the people". What Abraham Lincoln put forward is how democracy is translated. This explanation contains the characteristics of democracy, namely power is in the hands of the people, the people are actually the rulers where government is obtained from the people and presented to the people, here finally a political space is found that allows people to develop and participate in politics. which is open.³⁸

2. Authority of the Acting (Pj) Regional Head in Running Regional Government During the Simultaneous Local Election Transition Period

The public law concept of authority is the core concept of constitutional law and state administrative law. The new government (administration) can carry out its functions on the basis of the authority it has obtained, meaning that the legitimacy of governmental actions is based on the authority regulated in laws and regulations (legalitet beginselen). Appointment

³³Dio Ekie Ramanda, Rearranging Authority to Appoint Acting Regional Heads. *Journal of Social Sciences and Education (JISIP)* Vol. 6, No. July 3, 2022.

³⁴Eko Prasajo, Legitimacy of Acting Regional Heads, 10 May 2022. <https://fia.ui.ac.id/legitimasi-penjuang-head-area/> accessed on 1 September 2022

³⁵Op Cit.

³⁶Syarifuddin Usman, Polemics for the Appointment of Acting Regional Heads (Case Study of Submission of Acting Acting Regional Heads of Morotai Island Regency), *Journal of Science, Social and Humanities (JSSH)*, Volume 2 Number 1, (June 2022).

³⁷Jimly Asshddiqie, *Towards a Democratic Law Country*, Bhuana Popular Science, Jakarta, 2009. Pg. 398.

³⁸Dede Mariana, *Democracy and Decentralized Politics*, Graha Ilmu, Yogyakarta, 2008. Pg. 46.

as Acting regional head must meet the basic requirements and criteria as stipulated in Laws and Government Regulations No. 6 of 2005 concerning Election, Ratification of Appointment and Dismissal of Regional Heads and Deputy Heads.³⁹

The use of government authority in carrying out the roles, functions and duties of government in essence needs to be restricted. This is important so that in the actions or actions of the government there is no abuse of authority (*detournement de pouvoir*), violation of the law (*onrechtmatige overheidsdaad*) both formal and material in a broad sense, and arbitrary acts. Limitations on the use of this authority provide scope for the legality of government actions or deeds which include authority, procedure and substance.⁴⁰ Authority or authority is a very important part and the initial part of administrative law, because the government (administration) can only carry out its functions on the basis of the authority it has obtained, the legitimacy of government actions on the basis of authority regulated in the provisions of laws and regulations (*legalitiet beginselen*) so that does not cause problems in the aspect of State Administrative Law.⁴¹

Law of the Republic of Indonesia Number 6 of 2020 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, And the Mayor Becomes a Law does not strictly regulate the authority of the Acting Regional Head.⁴²

There are three regulations that can become the basis, namely the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government.⁴³; Government Regulation no. 49 of 2008 concerning Election, Ratification, Appointment and Dismissal of Regional Heads and Deputy Regional Heads⁴⁴; as well as Regulation of the Minister of Home Affairs No. 74 of 2016 concerning Leave outside the State's responsibility for Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors.⁴⁵

The acting is a definitive replacement for the regional head when there is a vacancy in the positions of regional head and deputy regional head simultaneously. The Acting Governor is appointed by the President through the proposal of the Minister of Home Affairs while the Acting Regent/Mayor is appointed by the Minister of Home Affairs on the recommendation of the Governor with the consideration of the DPRD. However, the proposal of the Acting Regent/Mayor by the Governor and the Acting Governor was based on the proposal of the Minister of Home Affairs which was not accompanied by a timeframe.⁴⁶

As a temporary replacement for the regional head, the acting has the duty and authority to replace the definitive regional head. As for referring to Article 65 Paragraph (1) of Law Number 23 of 2014 concerning Regional Government, regional heads have the following tasks:

- a. lead the implementation of government affairs which become the authority of the region based on statutory provisions and policies stipulated together with the DPRD;

³⁹Saeful Kholik Dan Carto, "Policy of the Minister of Home Affairs Concerning Requirements for Appointing Acting Governors in Regional Head Elections", *LEGAL PROBLEMS*, Vol 3, No 1 (2018)

⁴⁰Fabian Riza Kurnia and Rizari, *Juridical Review of the Authority of Interim Officials (PJS) Regional Heads During the Campaign Leave Period of Incumbent Regional Heads*, *Journal of Government Management*, Volume 11, Number. 2, 2019, p. 85.

⁴¹*Ibid*

⁴²Law of the Republic of Indonesia Number 6 of 2020.

⁴³Law of the Republic of Indonesia Number 23 of 2014.

⁴⁴Government Regulation no. 49 of 2008

⁴⁵Minister of Home Affairs Regulation No 74 of 2016.

⁴⁶Hayat, Masna. "Juridical Review of the Authority of Acting Regional Heads in Organizing Regional Government.", repository.unri.ac.id/

- b. maintaining peace and public order;
- c. drafting and submitting a draft regional regulation on the RPJPD and a draft regional regulation on the RPJMD to the DPRD for discussion with the DPRD, as well as formulating and stipulating the RKPD;
- d. drafting and submitting a draft regional regulation on APBD, a draft regional regulation on changes to the APBD, and a draft regional regulation on accountability for the implementation of the APBD to the DPRD for joint discussion;
- e. represent their area inside and outside the court, and can appoint a legal representative to represent them in accordance with the provisions of laws and regulations;
- f. propose the appointment of deputy regional heads;
- g. and carry out other tasks in accordance with the provisions of the legislation.

Meanwhile, the powers of acting regional heads are contained in Article 65 Paragraph (2) of Law Number 23 of 2014 concerning Regional Government, including:

- a. submit a draft regional regulation;
- b. stipulate regional regulations that have received joint approval from DPRD;
- c. stipulate local regulations and regional head decisions;
- d. take certain actions in urgent situations that are urgently needed by the region and/or the community;
- e. carry out other authorities in accordance with the provisions of the legislation.

The duties and powers of acting regional heads are also regulated in the Regulation of the Minister of Home Affairs (Permendagri) Number 1 of 2018 concerning Leave outside the State's responsibility for Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors.

These rules are specific to the duties and powers of regional head officials when the definitive regional head is on an election campaign. The duties and authorities of acting regional heads during the Pilkada campaign period are contained in Article 9 Paragraph (1) Permendagri Number 1 of 2018:

- a. lead the implementation of government affairs which become the authority of the region based on statutory provisions and policies stipulated together with the Regional People's Representative Council;
- b. maintaining peace and public order;
- c. facilitating the holding of definitive elections for governor and deputy governor, regent and deputy regent, mayor and deputy mayor as well as maintaining the neutrality of civil servants; And
- d. carry out discussions on draft Regional Regulations and may sign Regional Regulations after obtaining written approval from the Minister of Home Affairs; And
- e. Filling in officials based on statutory provisions after obtaining written approval from the Minister of Home Affairs.

In carrying out the duties and authorities referred to in paragraph (1), the Acting governor, Acting regent, and Acting mayor are responsible and obligated to submit reports on the implementation of their duties to the Minister of Home Affairs. This is regulated in paragraph (2) of the same article.

Unfortunately, the authority of the Acting Regional Head during the simultaneous local election transition period in the various regulations is not explicitly stated. On the contrary, it is precisely the prohibition that is regulated, namely in Article 132A Paragraphs 1 and 2 of Government Regulation Number 49 of 2008. Acting Regional Heads are prohibited from:

- a. carry out employee mutations;
- b. cancel permits issued by previous officials and/or issue licenses that are contrary to those issued by previous officials;
- c. make policies regarding the expansion of regions that are contrary to the policies of

- previous officials; And
- d. make policies that conflict with government administration policies and development programs for previous officials.

The provisions referred to in paragraph (1) may be waived after obtaining written approval from the Minister of Home Affairs. Apart from delaying the implementation of policies in the regions, this provision also has the potential for political interference. The ambiguity of authority coupled with the prohibition for acting regional heads carries the risk of, among other things, uncertainty in making strategic decisions and policies, as stated in Law No. 30/2014 concerning Government Administration, namely organizational, staffing and budgetary aspects; potential conflict with DPRD due to competition between politicians and political parties; bureaucratic resistance and resistance in the appointment of ASN positions; and stagnation of public services.

Prof. Eko Prasajo, proposed the need to make a legal breakthrough in the PP regarding the authority and implementation of tasks for acting regional heads during the simultaneous local election transition period. The president as the holder of government power according to the 1945 Constitution of the Republic of Indonesia Article 4 Paragraph 1 can make discretion and grant delegations to the appointed regional heads. This delegation is necessary and in accordance with Law No. 30 of 2014 concerning Government Administration.⁴⁷

The existence of a Circular Letter (SE) from the Ministry of Home Affairs (Kemendagri) which authorizes the acting regional head to dismiss ASN gives full approval to Plt, Acting, and Acting to transfer and dismiss ASN. Minister of Home Affairs Tito Karnavian, conveyed the authority of regional head officials to dismiss ASN only when employees commit violations of law and ethics. The SE issued aims to facilitate the administrative process for employee transfers. So far, the employee transfer process has been complained about because of the lengthy administrative process.⁴⁸

This gave rise to a polemic which stated that the Circular of the Minister of Home Affairs Number 821/5492/SJ concerning the Approval of the Minister of Home Affairs to Executors/Officers/Temporary Acting Regional Heads in the Personnel Aspects of Regional Apparatuses, is contrary to statutory regulations. The practice of using circular letters in Indonesia Circular letters in the constitutional system in Indonesia are classified as a form of policy regulation (*beleidsregel*) that was born from the development of the rule of law concept.

Circular Letters are policy regulations (*beleidsregel*), not decisions (*beschikking*) or statutory regulations (*regeling*), which means that a policy regulation is a pseudo-legislation that is not comprehensive but individual in nature, namely for the benefit of the government and the parties involved in the Circular Letter. . The meaning of Circular Letters cannot be referred to Legislation, because there is no basis for Legislation governing Circular Letters. UU no. 12/2011 jo. UU no. 15/2019 Concerning the Establishment of Legislation does not provide a clear understanding of the position, enforceability, content material regarding the use of Circular Letters.⁴⁹

Problems that arise during the simultaneous local election transition period require the government to act quickly. The government in carrying out its governmental tasks must be based on clear rules, exercise authority in acting. This is what sometimes makes the government act quickly to deal with a problem in society, if on the other hand the government

⁴⁷Eko Prasajo, Op Cit.

⁴⁸Editorial Team, Get to Know the Duties and Authorities of Acting Regional Heads, There Are Things That Are Prohibited to Do, 22 Sep 2022. <https://voi.id/berita/211926/mengenal-juang-dan-kejuangan-pj- Head of the area-ada-hal-hal-yang-dilarang-dido> accessed on 24 September 2022.

⁴⁹Rio Trifo Inggiz, Toto Kushartono, Aliesa Amanita. The position of the Circular Letter is Associated with Law Number 15 of 2019 Juncto Law Number 12 of 2011 Concerning the Formation of Legislation. *Journal of Legal Dialectics* Vol. 1 No. 1 of 2019

does not have a legal basis to act in issuing legal products in the form of legislation (regeling) or decisions (beschikking) because it is not within its authority, then from Therefore, the government can carry out its administration by issuing policies which are pseudo-legislation, one of which is in the form of circular letters.

However, in the Circular Letter of the Minister of Home Affairs Number 821/5492/SJ concerning the Approval of the Minister of Home Affairs to Acting Task Force/Officers/Temporary Acting Heads of Regions in the Personnel Aspects of Regional Apparatuses, researchers found inaccuracies in the use of the Circular Letter. This is seen from the material side contained in the contents, the Minister of Home Affairs gives written approval to the Acting (Plt), Acting (Pj), and Temporary Acting (Pjs) Governors/Regents/Mayors to carry out:

- a. Dismissal, temporary suspension of imposition of sanctions and/or other legal actions on officials/state civil servants within the provincial/regency/city regional government who commit disciplinary violations and/or follow-up legal proceedings in accordance with laws and regulations.
- b. Approval of transfers between regions and/or between government agencies in accordance with the terms and conditions set forth in the laws and regulations.

The researcher considers this Circular Letter to be contrary to the above regulations, when referring to Article 132A Paragraph 1 Government Regulation Number 49 of 2008. Acting Regional Heads are prohibited from:

- a. carry out employee mutations;
- b. cancel permits issued by previous officials and/or issue licenses that are contrary to those issued by previous officials;
- c. make policies regarding the expansion of regions that are contrary to the policies of previous officials; And
- d. make policies that conflict with government administration policies and development programs for previous officials.

Laws and Regulations can only be revoked through Legislation of a level or higher. The process of repealing laws and regulations is in line with the principle of *lex posterior derogate legi priori*, namely new laws and regulations take precedence over previous laws and regulations. From this theory, the researcher concludes that a law can only be repealed by a new law that regulates the same matter, or by higher statutory regulations in accordance with the hierarchy of statutory regulations.⁵⁰

The use of a Circular Letter is not within its function and position, in fact a Circular Letter is only a policy regulation, but by an authorized official it is used as a tool to cancel articles in the Legislation or the Circular Letter is not within its function and position.

Circular Letters belong to the *beleidsregel* which must also comply with the principles of forming good laws and regulations. In addition, he must also comply with the principle of making good policy regulations (*beginselen van behoorlijke regelgeving*). Policy regulations that bind the public will cause problems if they do not comply with the principles of forming laws and regulations, both formal and material.⁵¹

Some of the characteristics of policy regulations are:

- 1) These regulations are directly or indirectly based on formal legal provisions
- 2) The regulation is not written which is issued by the government based on authority in carrying out its duties in government
- 3) The regulations provide general instructions.

⁵⁰Ibid

⁵¹Cholida Hanum, *Juridical Analysis of the Position of Circular Letters in the Indonesian Legal System*. Humani (Law and Civil Society) Volume 10 No. 2 Nov 2020 Pg. 147

Bagir Manan, an expert on Indonesian law, also stated the characteristics of policy regulations:⁵²

- 1) Policy regulations are not statutory regulations
- 2) The principle of limitation and testing of legislation cannot be applied to policy regulations
- 3) Policy regulations cannot be tested in a *wetmatigheid* way (testing stone for statutory rules)
- 4) Policy regulations are made based on the *freies ermesen* function
- 5) Policy regulation testing emphasizes *doelmatigheid* (AAUPB touchstone)
- 6) In practice it takes the form of instructions, decisions, circulars, announcements and others.

IV. The Phenomenon of Mass Judgment in the Perspective of Legal Sociology

Article 1 paragraph 3 of the Constitution of the Republic of Indonesia expressly states that "Indonesia is a country based on law".⁵³ According to grammar, the existence of a rule of law has consequences in the form of all forms of decisions, various state equipment, overall attitudes, behavior and actions including those carried out by citizens, must be based on law or can be stated if all aspects relating to it are required to have legal legitimacy. Although this perspective is recognized as representing a relatively positivistic legal understanding, a more dogmatic juridical understanding.

Hans Kelsen is a prominent postivist who initiated an understanding that values law as an autonomous thing, law must stand alone, free from various social, political and economic elements. One of the positivistic exponents that has been described is Hans Kelsen through his pure legal theory "The pure theory of law". Whereas at the beginning of the 19th century there was a revolutionary change in perspective which had an impact on various aspects including law. One that is also affected is the positivistic view or paradigm that reviews law as a written norm "Law In text".

The impact on the scientific field of law refers to a legal perspective which was initially abstract and formal in nature to become a legal perspective with sociological, sociological and empirical juridical characteristics. From the school of history initiated by Von Savigny, which began to attract the attention of various groups for an analysis of law with an abstract and ideological nature, it became a legal analysis that focuses on the social environment that forms it. Savigni's main idea is that law becomes the realization of people's awareness (*Volksgeist*). He argued that law does not originate from legislators but originates from customs and beliefs. This historical school then paved the way for the emergence of various schools of sociological jurisprudence,

According to the sociological perspective, law is limited to an impact on social phenomena. Characteristics in the flow of sociology, the ideal law should adapt the laws that exist in society. This school clearly distinguishes the living law and the positive law. While positive law tends to have a dogmatic juridical view, while legal sociology has an empirical view. They want to carry out a sociological understanding of legal phenomena. So that sociology tends to refer to the Interpretative under standing of social conduct (an attempt to understand its object in terms of social behavior) which includes: causes, its course, and it's effects.

Legal phenomena according to a sociological perspective are in the form of various indications containing stereotypes, both written and unwritten.⁵⁴ George Ritzer stated that all intellectual fields were formed and regulated by social conditions, especially regarding sociology. George Ritzer in one of his works, namely a comprehensive discussion of sociology which is the object of knowledge in books on modern sociological theory. He made his own

⁵²Ibid

⁵³Article 1 paragraph 3 of the Constitution of the Republic of Indonesia

⁵⁴Achmad Ali, *Legal Theory and Court Theory*, (Jakarta: Prenada Media Group, 2009), page 21

judgment or *Eigenrichting* as one of the many phenomena he discussed in a book related to problems in law.

According to the sociological perspective, this phenomenon is merely a social phenomenon, in which an individual or a group of individuals tends to solve problems outside of various normative legal rules. One of the forms of *Eigenrichting* is beating, which often happens to criminals. Many acts of beatings or beatings arose because of the emotions of the masses that could not be controlled. The masses tend to get emotional when they find criminals caught red-handed. Which action is clearly wrong in terms of legal norms because there is no single reason that allows society to decide on an action independently unless there are conditions that compel the action, for example self-defense because the perpetrator of the crime poses a physical threat.

R. Soesilo argues that if an individual can judge himself to be in a "state of emergency" and be free from punishment if he has three conditions. First, the act must be done in order to defend or defend himself. Defense or defense must be indispensable or the only way There has to be a balance between the defense and the attack.⁵⁵In order to defend interests that are meaningless, such as individuals, it is prohibited to injure or kill other individuals. If the attacker is able to be rendered helpless, for example, it indicates that the defense through violence cannot be assessed as forced defense. Second, the defense is carried out against a number of interests stated in Article 49, namely body, honor (in the sexual sense) and personal or other individual goods. Third, there must be attacks that violate rights and make threats suddenly or at that moment. If, for example, a thief and his goods have been arrested, then the victim of theft is prohibited from defending himself by beating the thief, because in this condition the thief will no longer carry out any attacks.

Rules related to the basis for criminal abolition are also contained in the criminal laws of various other countries. Through a number of these rules, criminal law actually provides a normative means that allows an individual to defend himself against an unlawful attack or a criminal act.⁵⁶However, the defense that is carried out cannot be arbitrary and must comply with the law and the human rights of each individual, the criminal law also provides normative limitations through a number of conditions that are imposed. If, we only review according to positive law, so that many acts of self-judgment occur and often cause an individual to lose his life (who is likely not the actual perpetrator), it has violated the existing provisions. However, the problem is certainly not that simple, because we also have to look deeper into the triggers of problems in people's social life.

Various external factors also have an influence on it. For example officers who are powerless in dealing with various criminal acts, the criminal justice system is incapable of suppressing or reducing crime rates, judicial institutions that are less effective in proving the wrongdoing of perpetrators or correctional institutions that are less successful in carrying out resocialization. Evaluation is needed in terms of handling various social phenomena like this as a whole. Starting with the implementation of the system to how legal actors formulate policies appropriately in order to get solutions to similar problems. It should be realized that anarchist actions such as self-judgment/*Eigenrichting* are a realization of what Smelser termed a hostile outburst or a hostile frustration. The level of public trust in formal institutions including law enforcement has been very poor and has become a universal adage. The low level of public trust in law enforcement has resulted in people tending to solve problems through their own ways, thus triggering an increase in *Eigenrichting*.

⁵⁵George Ritzer, *Modern Sociological Theory*, (Jakarta: Prenada Media Group, 2010), page 87

⁵⁶Fitriati. 2012. Acts of vigilantism in criminological and sociological studies. *Journal of Legal Matters* 41(2), p. 163

On this basis, it is very reasonable when we say that Indonesia in general needs a new strategy, in the context of tackling vigilante acts. This new strategy is an effort to restore public trust in law enforcement officials and the government. However, on the other hand, the tendency of the community to beat perpetrators when they catch them is also commonplace. Beatings, beatings, and various actions that threaten the lives of criminals are also commonplace. According to the perspective of legal sociology, of course this condition becomes a phenomenon that requires a certain discourse. Because these actions have been embedded as a culture which will certainly be an interesting study related to how the sociology of law views similar phenomena.

This vigilante action is often found in society. It is not uncommon to find cases of criminals being beaten up by the community together. This has the opportunity to become a characteristic, namely that society tends to be destructive in efforts to resolve certain issues that should be brought into the realm of law, with regard to this, namely being handed over to the authorities. Self-judgment (*Eigenrichting*) according to the national legal system violates the provisions in the presumption of innocence. Therefore, an individual may not be punished regarding guilt or innocence without going through a legal process first, because there is a possibility that the individual is innocent but becomes a victim of self-judgment by society. Society should not be provoked in certain conditions where the presence of law is needed. Law is a means of social control, which becomes a problem when self-judgment of perpetrators of crimes is considered to be a common occurrence. Of course, this requires a solution, namely by shifting the paradigm in assessing similar events as a deviant act.

IV. CONCLUSION

The Acting (Pj) is a definitive replacement for the regional head when there is a vacancy in the positions of the regional head and deputy regional head simultaneously during the simultaneous Pilkada transition period. The Acting Governor is appointed by the President through the proposal of the Minister of Home Affairs while the Acting Regent/Mayor is determined by the Minister of Home Affairs. The mechanism for appointing acting regional heads as an implication of the vacancy in regional head positions, the Indonesian legal system has essentially accommodated the regulatory mechanism. However, this arrangement is basically irrelevant to the vacancy event that occurred as an implication of holding simultaneous local elections. The position of the acting (Pj) regional head as a replacement public official is "temporary" until the definitive regional head and deputy regional head are elected and installed. The appointment of the acting regional head (Pj) is a consequence of the holding of simultaneous local elections in 2024 as stipulated in Article 201, Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 Year 2014 Concerning the Election of Governors, Regents and Mayors Becomes Law.

Law of the Republic of Indonesia Number 6 of 2020 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, And the Mayor Becomes a Law does not strictly regulate the authority of the Acting Regional Head. Furthermore, regulations that can become the basis, namely the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government; Government Regulation no. 49 of 2008 concerning Election, Ratification, Appointment and Dismissal of Regional Heads and Deputy Regional Heads; as well as Regulation of the Minister of Home Affairs No. 74 of 2016 concerning Unpaid Leave for Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayor and Deputy Mayor. As for the authority of the Acting (Pj) regional head in the Circular Letter of the Minister of Home Affairs Number 821/5492/SJ concerning the Approval of the

Minister of Home Affairs to Executors/Officers/Temporary Acting Regional Heads in the Personnel Aspects of Regional Apparatuses, researchers think it is contrary to statutory regulations. Circular Letters belong to the *beleidsregel* which must also comply with the principles of forming good laws and regulations. In addition, he must also comply with the principle of making good policy regulations (*beginselen van behoorlijke regelgeving*).

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