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Legal Social Justice in Appointment Non-Definitive Regional Heads toward Welfare State

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ABSTRACT

The process of resolving administrative violations in the appointment of non-definitive regional heads that have not been regulated can threaten democratic values. Likewise, there has not been a judicial institution that has been given special authority to try it. This study aims to provide a regulatory model or settlement of administrative violations in the appointment of non-definitive regional heads in the welfare state. This study is a normative legal research that uses legal theory to settle administrative violations, legal protection, the welfare state, and Pancasila democracy. The study results show that the judicial mechanism for appointing non-definitive regional heads has a specificity that cannot be resolved through general State Administrative dispute resolution. In the USA, election disputes were resolved through the courts, whereas, in Australia, the Electoral Management Bodies determine the mayoral elections dispute. A design that can be chosen for the judicial process for appointing a non-definitive regional head is proposed, namely by granting authority to *Bawaslu* to resolve administrative violations through the Special Court mechanism. The granting of judicial authority can fulfill the basic principles of fast, open, and constitutional non-definitive regional head appointment dispute resolution.



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1. Introduction

The concept of a welfare state, the state has an obligation and is required to extend its responsibility to social problems faced by society. This concept is used as the basis for the position and function of government (*bestuurfunctie*) in modern countries to realize a condition of welfare for the people, carried out through government administration through

services, assistance, protection, and prevention of social problems.¹ All the basic needs of society, such as access to education, health services, and decent employment opportunities, are the duty and responsibility of the state. Therefore, according to the constitution, the government has the authority and function to realize prosperity.²

Administration in the region is led by a regional head directly elected by the community as a representation of the community itself. The regional head is also obliged to administer his government to realize service to the community. The spirit of democracy in the regions in determining their leaders in the regions (regional heads) is guaranteed through Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that "Governors, Regents, and Mayors respectively as heads of provinces, districts, and cities are democratically elected" The juridical implication is that people can directly elect their respective regional heads. It is, of course, in line with the basic principle of democratic representation: voters can choose politicians who reflect their beliefs and preferences. In a functioning, high-quality democracy.³

The main ideas in the Preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution) are the implementation of Pancasila values.⁴ The constitution as the basic norm of the state (*staatsfundamentalnorm*) provides a mandate that Indonesia has a democratic system,⁵ which is stated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The holding of general elections is one of the agendas for implementing democratic values in Indonesia. General elections are used to elect members of the legislature and chief executive at both the national and regional levels.⁶

Regarding filling the post of the regional head, constitutionally, it is carried out through a direct election process held every five years – the definitive regional head. The implication is that the term of office for regional heads is also limited to five years.⁷ However, there are circumstances where a definitive official cannot fill the post of the regional head. Some of these conditions include the regional head stopping, being permanently absent, or being dismissed during his term of office. This condition causes a vacancy for regional head officials because regional head elections cannot be held in less than five years. It means that the periodization of regional head elections is absolute. Therefore, to overcome this power vacuum, the position of the regional head is filled by a non-definitive official.

¹ Oriana Bandiera and Gilat Levy, 'Diversity and the Power of the Elites in Democratic Societies: Evidence from Indonesia', *Journal of Public Economics*, 95.11–12 (2011), 1322–30 <https://doi.org/10.1016/j.jpubeco.2011.04.002>

² Eny Kusdarini and others, 'Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia', *Heliyon*, 8.12 (2022), e11932 <https://doi.org/10.1016/j.heliyon.2022.e11932>

³ Diego Fossati and others, 'Ideological Representation in Clientelistic Democracies: The Indonesian Case', *Electoral Studies*, 63.November 2019 (2020), 102111 <https://doi.org/10.1016/j.electstud.2019.102111>

⁴ Juneman, Eko A. Meinarno, and Wahyu Rahardjo, 'Symbolic Meaning of Money, Self-Esteem, and Identification with Pancasila Values', *Procedia - Social and Behavioral Sciences*, 65 (2012), 106–15 <https://doi.org/10.1016/J.SBSPRO.2012.11.099>

⁵ Diego Fossati, 'Beyond "Good Governance": The Multi-Level Politics of Health Insurance for the Poor in Indonesia', *World Development*, 87 (2016), 291–306 <https://doi.org/10.1016/j.worlddev.2016.06.020>

⁶ Ward Berenschot and Peter Mulder, 'Explaining Regional Variation in Local Governance: Clientelism and State-Dependency in Indonesia', *World Development*, 122 (2019), 233–44 <https://doi.org/10.1016/j.worlddev.2019.05.021>

⁷ Firman Noor and others, 'The Implementation of Direct Local Election (Pilkada) and Money Politics Tendencies: The Current Indonesian Case', *Politik Indonesia: Indonesian Political Science Review*, 6.2 (2021), 227–46 <https://doi.org/10.15294/ipsr.v6i2.31438>

The filling positions can be done with a mechanism, namely through the appointment of Daily Executors (*Plh*), Task Executors (*Plt*), Temporary Officers (*Pjs*), and Acting (*Pj*) regional heads.⁸ The case of filling the vacancy for the regional head, the appointment mechanism for the acting regional head is used. The mechanism for appointing acting regional heads is used in the context of regional head vacancies. The basis for the appointment of the Acting Regional Head (*Pj*) is regulated in several articles, namely, Article 86 paragraph (2), paragraph (3), and paragraph (5) of Law No. 23 of 2014, Article 174 paragraph (7) of Law no. 10 of 2016, Article 54D paragraph (4) of Law no. 10 of 2016, and Article 201 paragraph (9), paragraph (10) and paragraph (11) of Law no. 10 of 2016.

However, filling this position still raises the pros and cons. It is because each process of appointing an acting regional head does not involve the participation of the Regional House of Representatives or the community. Society as the holder of sovereignty becomes neglected. The initial concept of electing a regional head involved the community. The appointment of public officials without involving the public's participation is contrary to the principles and requirements of democracy, namely government that is limited and does not act arbitrarily by always making the people the highest authority holders.

The mechanism for filling the post of a non-definitive regional head is currently not accompanied by legal protection. Legal protection is a constitutional right that must be attached to and given to every citizen. Article 28D of the 1945 Constitution of the Republic of Indonesia states that every citizen is obliged to receive fair guarantees, recognition, and legal protection.⁹ This form of legal protection can be divided into preventive legal protection and repressive legal protection. Preventive legal protection is a space where efforts are made before a decision is taken. Meanwhile, repressive legal protection is a form of protection given to citizens if they feel disadvantaged by government decisions (state administrative officials), including government decisions regarding appointing non-definitive regional heads.

Preventive and repressive legal protection has not been provided in the event of administrative violations in the non-definitive appointment of regional heads, as can be seen from the process of appointing regional heads, which does not regulate the provision of opportunities for the people to be able to express complaints on decisions of the President and/or Ministers. More specifically, the people cannot legally file a lawsuit if they feel disadvantaged by the findings of the President and Minister of Home Affairs regarding the appointment of non-definitive regional heads, especially if there are administrative violations in the appointment of a non-definitive regional head. Incomplete or incomplete norms are closely related to implementing legal protection. The absence of norms regarding the settlement of administrative violations for appointing non-definitive regional heads creates legal uncertainty. It is impossible to determine whether the legal process is regulated by referring to general legal protection provisions related to losses suffered as a result of government decisions or not.¹⁰ When referring to the general provisions regarding legal

⁸ William R.I. Sopaheluwakan and others, 'Two-Decade Decentralization and Recognition of Customary Forest Rights: Cases from Special Autonomy Policy in West Papua, Indonesia', *Forest Policy and Economics*, 151.March (2023), 102951 <https://doi.org/10.1016/j.forpol.2023.102951>

⁹ Krisztina Kis-Katos and Bambang Suharmoko Sjahrir, 'The Impact of Fiscal and Political Decentralization on Local Public Investment in Indonesia', *Journal of Comparative Economics*, 45.2 (2017), 344–65 <https://doi.org/10.1016/j.jce.2017.03.003>

¹⁰ Nicolae Stef, Sami Ben Jabeur, and Robert F. Scherer, 'Time to Resolve Insolvency and Political Elections', *International Review of Law and Economics*, 72 (2022), 106104 <https://doi.org/10.1016/J.IRLE.2022.106104>

protection for justice-seeking people in terms of decisions of state administrative officials, the legal mechanism is through the state administrative dispute mechanism.¹¹

The appointment of a non-definitive regional head is still ambiguous in the procedural arrangements. In 2022, the Jakarta Legal Aid Institute was suing the President of the Republic of Indonesia and the Minister of Home Affairs at the Jakarta State Administrative Court (PTUN Jakarta). The lawsuit was filed based on an act against the law of the authorities (*Onrechtmatige Overheidsdaad*). It is because the President, without first forming implementing regulations regarding mechanisms and requirements that are measurable and clear regarding the filling of acting regional heads and their limits of authority. This responsibility can be referred to in Article 205 C of Law no. 10 of 2016, Constitutional Court Decision Number 67/PUU-XIX/2021, and Constitutional Court Decision Number 15/PUU-XX/2022, and supported by the recommendations of the Indonesian Ombudsman.

The various appointments of regions unilaterally by the Central Government without precise mechanisms and requirements have met opposition from the public and even the local, and regional government, such as Banten residents who challenged the appointment of regional heads to the Governor of Southeast Sulawesi who refused to appoint acting regents/mayors. In addition, the contra to the appointment of active members of the Indonesian National Armed Forces working in several areas, such as in Aceh Province, the Acting Governor of West Papua, the Head of the Central Sulawesi State Intelligence Agency (BIN) who was appointed as the Acting Regent of West Seram, Maluku Province, who also triggering a public lawsuit. Acting regional heads who initially did not qualify as echelon (I) were tricked by being appointed as expert staff of the Minister of Home Affairs, who incidentally was in echelon (Ib) position—Acting Governor of South Papua Apolo Safanpo and Acting Governor of Central Papua Ribka Haluk. In Jakarta, widespread public protests have been filed because of the unclear limits on officials' authority when they deviate from the Regional Development Plan, which was agreed upon as a working reference for the simultaneous local elections. In this case, the President can abuse his power by appointing acting regional heads, threatening regional autonomy and the people's political rights.

State administrative disputes are disputes that arise as a result of decisions of state administrative officials. The President and the Minister of Home Affairs are included in the qualifications as state administration officials who issue decisions regarding appointing non-definitive regional heads. Therefore, the President and Ministers can be sued for their decrees establishing regional heads non-definitively. If the President and the Minister lose in resolving this state administrative dispute, the President and the Minister are obliged to revoke their decision. Lawsuits against the President and Ministers regarding the appointment of non-definitive regional heads never occurred during the era of President Susilo Bambang Yudhoyono. The case was filed over the decision regarding the appointment of the Governor of Bengkulu. From the trial process, the President was declared defeated and ordered to revoke the decision he issued.

On the other hand, the judicial mechanism through the administrative dispute door in the non-definitive appointment of regional heads raises several crucial issues. First,

¹¹ Aprista Ristyawati, 'Efektifitas Kebijakan Pembatasan Sosial Berskala Besar Dalam Masa Pandemi Corona Virus 2019 Oleh Pemerintah Sesuai Amanat UUD NRI Tahun 1945', *Administrative Law and Governance Journal*, 3.2 (2020), 240–49 <https://doi.org/10.14710/alj.v3i2.240-249>

administrative efforts. Based on the *ius constitutum*, the judicial process for administrative disputes to the State Administrative Court (PTUN) must first go through administrative efforts. The provision that there must be an administrative effort first is regulated in Articles 75-76 of Law Number 30 of 2014 concerning Government Administration, Supreme Court Regulation Number 6 of 2018, and Articles 48-52 of the Law on State Administrative Courts.¹² However, administrative efforts on presidential and ministerial decisions regarding appointing non-definitive regional heads cannot be carried out. This condition occurs because, in the procedure for administrative efforts through administrative objections or appeals, there is no institution authorized to examine and decide on administrative efforts from people who feel aggrieved by the decision to appoint a non-definitive regional head. If an administrative effort is to be made against the President's decision regarding appointing a non-definitive Governor, then automatically, the organization authorized to handle the administrative effort is the President's superior. The issue that then arises is who is the party that has a position above the President in an administrative context.¹³

It is considering that the President is the administrative head of the country. In the end, administrative efforts through administrative appeals also cannot be carried out because administrative appeals are efforts in which a decision is adjudicated by an executive organization that is given a particular task to handle administrative efforts.¹⁴ Whereas in the case of regional head election disputes, administrative efforts against the Regional General Election Commission decisions are submitted to the Election Supervisory Body (*Bawaslu*). It means that in the context of the President's decision regarding the appointment of non-definitive regional heads, no organization can handle it and a legal basis that can be used as a reference.¹⁵

Julia Tschersich and Kristiaan P.W. Kok (2022) highlight six challenges to institutionalizing democratic governance. They discussed the balance of tensions between the multiple dimensions of justice, democracy, urgency, top-down and bottom-up directions, local and global scales, realism and idealism, and the role of the ruling scientific system. Democracy in transitional governments requires the institutionalization of meaningful participation from multiple voices and perspectives.¹⁶ Research on democracy was conducted by Maria-Eleni K. Agoraki et al. (2019), who examined democracy in Central and Eastern Europe and demonstrated that countries are more democratic with better regulatory frameworks.¹⁷ Pavel Šaradín et al. (2020) present unique survey data focusing on local democracy, political attitudes, and political participation. Local politics

¹² Septiawan Santana Kumia and others, 'The Characteristics of Investigative News Organizations in Indonesia between 2010-2012', *Heliyon*, 7.2 (2021), e06276 <https://doi.org/10.1016/j.heliyon.2021.e06276>

¹³ Raphael Mondesir, 'A Civic Bridge or a Silo? Islam, Religious Affiliation, and Civic Engagement in Rural Indonesia', *Social Science Research*, 112.March (2023), 102876 <https://doi.org/10.1016/j.ssresearch.2023.102876>

¹⁴ Dewi Cahyandari, Ahmad Siboy, and Sudarsono Sudarsono, 'Urgensi Pemisahan Kewenangan Mengadili Perselisihan Hasil Pemilihan Umum Serentak', *Arena Hukum*, 13.01 (2020), 59–76 <https://doi.org/10.21776/ub.arenahukum.2020.01301.4>

¹⁵ Hilary Oliva Faxon and others, 'Territorializing Spatial Data: Controlling Land through One Map Projects in Indonesia and Myanmar', *Political Geography*, 98.March (2022), 102651 <https://doi.org/10.1016/j.polgeo.2022.102651>

¹⁶ Julia Tschersich and Kristiaan P.W. Kok, 'Deepening Democracy for the Governance toward Just Transitions in Agri-Food Systems', *Environmental Innovation and Societal Transitions*, 43 (2022), 358–74 <https://doi.org/10.1016/j.eist.2022.04.012>

¹⁷ Maria-Eleni K. Agoraki, Georgios P. Kouretas, and Christos Triantopoulos, 'Democracy, Regulation and Competition in Emerging Banking Systems', *Economic Modelling*, 84 (2020), 190–202 <https://doi.org/10.1016/j.econmod.2019.04.009>

(local electoral involvement, local electoral behavior, local non-electoral participation, trust in local institutions, and evaluating the efficacy of local policies) with areas typically related to national politics (political interests, trust in institutions, political cynicism, populist attitudes, and knowledge political).¹⁸ Zahoor Ahmed et al. (2022) state that the system ensures policies made by the government are clean rather than personal interests.¹⁹ Dongwon Lee et al. (2021), the Weak rule of law and ineffective governance largely explain the political budget cycle in flawed democracies.²⁰

In prior studies, much has been discussed about how democracy can influence policy making in contrast to this writing which focuses on administrative dispute resolution in appointing non-definitive regional heads. The appointment of regional heads without going through regional elections is considered to be detrimental to democratic values. Community representation is non-existent, especially if this appointment has an administrative dispute. In comparison, the position of the regional head is a strategic position that influences many regional policies. Therefore, the legal gap in this writing lies in the absence of administrative dispute settlement arrangements in appointing non-definitive regional heads—especially those that are fast. It is because the term of office for a non-definitive regional head is no longer than three or four years, so a more suitable dispute resolution arrangement is needed. It is to avoid regional heads who are appointed administratively disabled remaining in office for a long time, even until the term of office is over. Still, a dispute decision has not been produced. This writing aims to build a dispute resolution model not required at the Administrative Court but with another model that is more suitable to administrative disputes in general elections or the appointment of regional heads.

The urgency of writing this is that there will be many vacancies for regional head positions due to the postponement of regional head elections in 271 regions in 2022 and 2023. Regional head elections will be held simultaneously in Indonesia in 2024. Where there is the potential for administrative violations to occur, communities that do not elect their regional heads will undoubtedly be further excluded from participation if administrative violations occur during this appointment. Therefore, administrative dispute resolution must be provided with arrangements and models to resolve disputes appropriately.

2. Research Method

This article is a normative legal research article regarding the concept of democracy in the welfare state, which is related to the settlement of administrative disputes in the appointment of non-definitive regional heads. This paper explains legal facts with inductive logic, interprets and evaluates policies governing non-definitive regional head elections to obtain a non-definitive regional head election administration dispute resolution policy model that follows the values and morals of Indonesia, which upholds the principles of Pancasila democracy. This article uses various primary and secondary legal sources, such as laws and regulations, legal texts, books, and journals. The approach used in this paper is the statutory approach used to find a legal basis for resolving administrative violations, which

¹⁸ Pavel Šaradín and others, 'Post-Election Survey Data: Local Democracy and the 2018 Local Elections in the Czech Republic', *Data in Brief*, 36 (2021), 107039 <https://doi.org/10.1016/j.dib.2021.107039>

¹⁹ Zahoor Ahmed, Abdullah Emre Caglar, and Muntasir Murshed, 'A Path towards Environmental Sustainability: The Role of Clean Energy and Democracy in Ecological Footprint of Pakistan', *Journal of Cleaner Production*, 358 (2022), 132007 <https://doi.org/10.1016/j.jclepro.2022.132007>

²⁰ Dongwon Lee and Sujin Min, 'Defective Democracy and the Political Budget Cycle', *Journal of Comparative Economics*, 49.4 (2021), 947–61 <https://doi.org/10.1016/j.jce.2021.04.009>

makes it possible to adjudicate non-definitive regional head appointment disputes. The conceptual approach is used to find concepts related to administrative dispute resolution in appointing non-definitive regional heads based on the principles of administrative, procedural law, legal protection, welfare state and Pancasila democracy. The flow of writing this article is: finding legal facts, identifying legal problems, analyzing problems, building settlement models, and drawing conclusions.²¹

3. Results and Discussion

3.1. Democracy, Regulation and Local election in Indonesia, USA and Australia.

The political challenges between businesses, citizens, and government as the main actors in a democratic system. Therefore, government representatives are very influential on how the country is administered.²² Elections are primarily held by thousands of state and local systems rather than a single national system. The various democratic practices can have different effects on strategic policymaking.²³ In the United States of America (the USA) and localities share responsibility for most election administration tasks. Regions usually have the main responsibility for holding elections in accordance with rules that have been made at the country level. Local government in the United States refers to the jurisdiction of government below the state level. Most states and territories have at least two levels of local government: county and municipal. Population centers can be organized into composite municipalities of several types, including towns, cities, counties, and villages.

Local governments across the USA are made up of hundreds of thousands of elected officials. Local elections are often characterized by "very low" turnout, as these elections are out of sync with state and federal elections. A 2009 study found that less than 40% of registered voters participate in local elections for mayor and city council. The mayor is the head of municipal government, maximum civil authority at the municipal level, in most municipalities of the United States. In the United States, there are several different types of mayors, depending on whether the local government system is a council-manager government or a mayor-council government. Under a council-manager system of government, the mayor is first among equals on the city council, which acts as the legislature while executive functions are performed by appointed managers. Whereas, under the mayor-council system, the mayor and city council are separate offices. This system can be of two types, a strong mayor system or a weak mayor system. Under a strong mayoral system, the mayor acts as an elected executive with the city council exercising legislative powers.

A mayor-council system of government is a system of local government that has a mayor directly elected by the electorate as the chief executive, and a separately elected legislative city council. It is one of the two most common forms of local government in America.

²¹ Reza Banakar, *Normativity in Legal Sociology* (Cham: Springer International Publishing, 2015) <https://doi.org/10.1007/978-3-319-09650-6>

²² Doina Stratu-Strelet and others, 'Developing a Theory of Full Democratic Consolidation: Exploring the Links between Democracy and Digital Transformation in Developing Eastern European Countries', *Journal of Business Research*, 157 (2023), 113543 <https://doi.org/10.1016/j.jbusres.2022.113543>

²³ Yun-Chung Ting and Thung-Hong Lin, 'For Security or Sustainability? Investigating the Global Nexus of Nuclear Power, Democracies, and Civil Society', *Energy Research & Social Science*, 81 (2021), 102284 <https://doi.org/10.1016/j.erss.2021.102284>

Under its form, an elected governing body, usually called a city council, councilor council, or similar title, is responsible for legislative functions such as setting policy, passing local bylaws, allocating votes, and developing an overall vision, similar to a corporation. Therefore, the appointment of a mayor-council or a council-manager is based on direct election results. Research conducted by Rumayya et al. (2020) stated that regional head elections had been carried out through direct elections to strengthen local government accountability within this new government structure, it was only natural that the incumbent district head would assume responsibility for local economic performance. The findings suggest that voters pay more attention to and are wary of incumbents' performance in the final year of their term rather than their entire term.²⁴

Meanwhile, indirect elections in the United States are known as the President. The Electoral College is a popular indirect election method of the President of the United States. Instead of voting for a specific candidate, voters in popular elections don't directly vote for individual panels that promise to vote for a particular candidate. This is in contrast to popular elections where votes are cast for individual candidates. For example, in a general presidential election, voters select electors to represent their vote in the Electoral College, and not for individual presidential candidates. In resolving general election disputes, in America it can be done through The Supreme Court of the United States, the highest court in the state of the U.S., or The United States District Court for the District.

In Australian councils, the mayor is generally a member of the council who acts as a ceremonial figure at official functions, as well as carrying council authority between meetings. Mayoral decisions made between meetings are subject to the council and can be confirmed or revoked if necessary. Mayors in Australia can be elected either directly by voting for the position of mayor at local government elections, or alternatively can be elected from within the council at a meeting. The civil regalia and coats of arms of local government have remained essentially unchanged for centuries. For ceremonial occasions, the mayor may wear the cassock, mayor's chain, and mace. In councils where councilors are elected representing a political party, the mayor is usually the leader of the party that receives the most seats on the council. In Queensland, mayors and mayors are elected by popular vote at general assembly elections.

Councilors must elect a mayor from among themselves every two years unless they have a mayor elected by popular vote. Council members can also elect a deputy mayor. Deputy mayors can be elected for a mayoral term or a shorter term. Mayors and council members can be elected to the council as a whole or to represent specific wards (sub-districts of the council). Your council may have area council members and ward council members. If the board has no ward, only area board members are elected. Both ward and area council members must consider the interests of the area council as a whole. In some elections, the principal is decided by the council. They are called the chairman, not the mayor. Starting in 2026, all school principals (mayors) will be elected by the community. Similarly, Burrell Vann Jr. (2022) states that a country's level of direct democracy can indicate a country's openness to progressive policy changes. Scholars should consider how direct democracy interacts with contextual factors to influence the stages of the policy

²⁴ Rumayya and others, 'The Local Economy and Re-Election of Incumbent District Leaders in Indonesia', *Heliyon*, 6.5 (2020), e04098 <https://doi.org/10.1016/j.heliyon.2020.e04098>

change process.²⁵ Election dispute resolution in Australia is resolved by the Electoral Management Bodies, in Indonesia known as General Election Commissions.

Moreover, filling the position of the regional head is carried out through a democratic election process. The form of a democratic election is not explained, but in general democratic elections can be in the form of elections by representative institutions or direct elections by the people. In Indonesia, democratic elections are interpreted as direct elections by the people (one man, one vote).²⁶ Meanwhile, regional head elections are held once every five years, so the transition process for regional head positions runs regularly. It means that the replacement of the regional head is only valid if it goes through an election process held every five years. Electing or changing regional heads outside direct elections is an election process that cannot be justified by law and is against the constitution. It must be remembered that democracy through elections has an effect on the level of welfare. In their research, Francis Osei-Tutu and Laurent Weill (2022) said that democracy supports economic development for prosperity.²⁷

However, several conditions provide room for filling regional head positions without going through general elections. It is solely to fill the vacancies that can cause government dysfunction, especially in state positions.²⁸ Therefore, filling state positions (*staatsorganen, staatsambten*) is an essential element in the implementation of state organizations. The mechanism for filling the role of the regional head through the Acting regional head is a mechanism regulated in Article 201 Paragraph (9) of Law No. 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 (Law No. 10 of 2016).

This mechanism is carried out as long as it does not conflict with laws and regulations. Acting regional heads are an operationalization of the concept of delegation of presidential powers. The official is an appointed (non-definitive) delegate who must fulfill administrative requirements and must be approved by the President because he is different from the Regional Head as a result of the regional head election (politically elected/definitive).²⁹

Article 78, paragraph (1) of Law Number 23 of 2014 concerning Regional Government states that regional heads stop for several reasons. Regional and/or deputy regional heads end their duties because: a). Die; b). own request or c). Dismissed. In addition, Article 86, paragraph (2), paragraph (3), and paragraph (5) of Law no. 23 of 2014 regulate the legal

²⁵ Burrell Vann Jr, 'Direct Democracy and the Adoption of Recreational Marijuana Legalization in the United States, 2012–2019', *International Journal of Drug Policy*, 102 (2022), 103583 <https://doi.org/10.1016/j.drugpo.2022.103583>

²⁶ Ian R. Turner, Norman Schofield, and Maria Gallego, 'Does the 1 Person 1 Vote Principle Apply?', in *Emerging Trends in the Social and Behavioral Sciences* (Wiley, 2015), pp. 1–20 <https://doi.org/10.1002/9781118900772.etrds0086>

²⁷ Francis Osei-Tutu and Laurent Weill, 'Democracy Favors Access to Credit of Firms', *European Journal of Political Economy*, 2022, 102312 <https://doi.org/10.1016/j.ejpoleco.2022.102312>

²⁸ Risa J. Toha, Dimitar D. Gueorguiev, and Aim Sinpeng, 'The Normalization of Intolerance: The 2019 Presidential Election in Indonesia', *Electoral Studies*, 74.March (2021), 102391 <https://doi.org/10.1016/j.electstud.2021.102391>

²⁹ Ken M.P. Setiawan and Dirk Tomsa, *Politics in Contemporary Indonesia* (London: Routledge, 2022) <https://doi.org/10.4324/9780429459511>

basis for the appointment of Acting regional heads if the definitive regional head is temporarily dismissed without going through the recommendation of the Regional House of Representatives because he was charged with committing a crime punishable by imprisonment for a minimum of 5 (five) years, criminal acts of corruption, criminal acts of terrorism, treason, criminal acts against state security, and/or other acts that can divide Indonesia, as a unitary state, and there are no regional deputy heads.

Moreover, Law No. 10 of 2016 regulates in several articles the legal basis for regional heads to be replaced by regional officials. First, Article 174 paragraph (7) of Law no. 10 of 2016, filling positions by regional officials can be carried out if the regional head and/or deputy regional head end their duties because a. died, b. own request, c. dismissed, and the term of office is less than 18 (eighteen) months.

Second, Article 54D paragraph (4) of Law no. 10 of 2016, if no candidate pair has been elected because the regional head election results do not meet the voting requirements of more than 50%. Third, Article 201 paragraph (9), paragraph (10), and paragraph (11) of Law no. 10 of 2016, to fill the vacant positions of governor and deputy governor, regent and deputy regent, as well as the mayor and deputy mayor whose term of office ends in 2022 and 2023 due to delays due to simultaneous national elections in 2024. Previous regional head elections were postponed due to the Covid-19 pandemic.³⁰ The election for regional heads, which was initially held in September 2020, was delayed until December 2020.

The postponement of regional head elections in 2022 and 2023 resulted in 271 regions (101 regions in 2022 and 170 regions in 2023), both at the Provincial and Regency/City levels experiencing vacancies for regional head officials because their term of office has expired. The appointment of Acting regional heads is the foremost choice of the central government to avoid a vacuum of power in these regions. There are 101 regional heads whose term of office will end in 2022, consisting of 7 governors, 76 district heads, and 18 mayoral levels. Whereas in 2023, there will be 170 regional heads whose term of office ends, regional head officials must be appointed as replacements, consisting of 18 governors, 115 regents, and 38 mayors.

The holding of simultaneous regional head elections certainly causes a situation where a definitive official cannot fill the position of the regional head, so it must be filled first by a non-definitive regional head. It is because it is not yet time to fill in usually or has not yet entered the regional head election period, which is scheduled every five years. In other cases, if the regional head is supposed to serve from 2019 to 2024 but dies in 2021, then there will automatically be a vacancy for the regional head position from 2021 to 2024.³¹

However, the non-definitive pattern of filling the post of the regional head has one crucial legal problem, namely, if there are parties who are harmed by the appointment process. Regarding the objection to the appointment process, there is no firm and clear

³⁰ Richard Kennedy and Bonaventura Pradana Suhendarto, 'Diskursus Hukum: Alternatif Pola Pengisian Jabatan Kepala Daerah Di Masa Pandemi Covid-19', *Jurnal Pembangunan Hukum Indonesia*, 2.2 (2020), 188–204 <https://doi.org/10.14710/jphi.v2i2.188-205>

³¹ Jon D. Miller, Logan T. Woods, and Jason Kalmbach, 'The Impact of the Covid-19 Pandemic in a Polarized Political System: Lessons from the 2020 Election', *Electoral Studies*, 80 (2022), 102548 <https://doi.org/10.1016/j.electstud.2022.102548>

legal rule. It is different from the lawsuit or dispute process in the process of definitively filling the position of the regional head, where the function and flow of settlement are regulated in detail.³² As a result of the absence of a firm legal instrument, the legal mechanism adopted in terms of efforts to object to the filing of regional head positions is to use the state administration dispute route. It is a dispute that arises due to decisions of state administration officials that are individual, concrete, and causing law consequences.³³

The state administrative dispute mechanism was chosen because the object of this dispute is *beschikking* or a decision.³⁴ On the one hand, the choice to use the state administration dispute path in terms of efforts to challenge the filling of non-definitive regional head positions through the Plt, Plh, Pjs mechanism is an option that cannot be blamed. It is because the appointment of non-definitive regional heads through the Plt, Plh, Pjs mechanism is realized in the form of a Decree, namely a Ministerial Decree, a Governor's Decree, or a Presidential Decree. The Minister's decision qualifies as *beschikking*, considering that the Minister is a state administration official, as referred to in Law no. 65 of 86 concerning the State Administrative Court and Law No. 30 of 2014. This case, for instance, can be taken from the lawsuit against the appointment of the acting governor of Banten Al Muktabar held at PTUN Jakarta with No. 202/G/2022/PTUN.JKT.

However, the state administrative justice route is a path that creates various problems for the settlement process for filling the non-definitive regional head position. There are several reasons: First, regarding substance, the settlement mechanism through state administrative disputes is taken because it only looks at the aspect or legal basis for the appointment of a definitive regional head replacement. Thus, appointing a non-definitive regional head is equated with the process of legal action or government legal action in general. In contrast, establishing a non-definitive regional head has a different meaning or substance. It means the appointment of non-definitive regional head officials can be seen not only from the side of the legal basis issued by the government but also from the view of the government's decision. In terms of the government function, there are problems with decisions on the appointment of a non-definitive regional head. It is considered that the decision to appoint a non-definitive regional head is not solely a matter of the procedure for issuing a decree but also the consequences arising from the decision.

The decision regarding the appointment of a non-definitive regional head is a decision that gives someone a position to occupy the role of the regional head. Thus, the decision to appoint a regional head is not limited to the form of the decision. However, whether a regional head position is valid, the filling process must go through an election process. Still, in the context of appointing a non-definitive regional head, it becomes a unilateral decision by a person and/or the President. At this level, the test is not only in terms of administrative disputes but also related to how someone is elected as a non-definitive

³² Paola Bertoli, Adriana G. Garcia, and Nuno Garoupa, 'Testing an Application of the Political Insurance Model: The Case of the Mexican State-Level Administrative Courts', *Journal of Economic Behavior and Organization*, 195 (2022), 272–87 <https://doi.org/10.1016/j.jebo.2022.01.021>

³³ Indriati Amarini and A. Nurul Hidayah, 'Judicial Activism Resolving Administrative Disputes in Indonesia', in *Proceedings of the 3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)* (Paris, France: Atlantis Press, 2019) <https://doi.org/10.2991/icgslow-19.2019.79>

³⁴ Herman Herman and Hendry Julian Noor, 'Doktrin Tindakan Hukum Administrasi Negara Membuat Keputusan (Beschikking)', *Jurnal Komunikasi Hukum (JKH)*, 3.1 (2017), 82 <https://doi.org/10.23887/jkh.v3i1.9240>

regional head. The settlement process through state administrative disputes does not judge how someone is elected. PTUN purely assesses the legitimacy of a decision from a strictly procedural perspective.

Second, regarding administrative efforts. Suppose the state administrative dispute mechanism is used with a lawsuit to the state administrative court (PTUN and PT TUN). In that case, the settlement process will automatically be subject to the state administrative justice system.³⁵ One part of the state administrative justice system is that all administrative disputes must first go through administrative efforts.³⁶ These provisions are regulated in Articles 75-76 of Law No. 30 of 2014 and Article 48 of Law Number 5 of 1986 concerning the State Administrative Court (as last amended by Law No. 51 of 2009). Complementing these two regulations is Supreme Court Regulation No. 6 of 2018.

Theoretically, administrative efforts are made outside of legal remedies or the settlement process outside the judiciary.³⁷ Administrative efforts are divided into two. First, administrative objections and administrative appeals. Administrative objections are administrative efforts whose resolution is carried out by decision-making organizations, while administrative appeals are administrative efforts whose settlement is carried out by agencies or other organizations. In the case of the appointment of non-definitive regional heads, space to carry out administrative efforts is something that is not possible. It is because no institution can or has been formed to handle administrative efforts on the decisions of the Minister of Home Affairs and the President regarding appointing non-definitive regional heads.

Without any administrative efforts, it will undoubtedly result in further legal proceedings in which the Minister and/or President's decision regarding appointing a non-definitive regional head cannot be adjudicated by the Administrative Court—considering that PTUN cannot adjudicate a dispute without first going through administrative measures. Thus, legal remedies against decisions regarding appointing non-definitive regional heads cannot be made. This condition is undoubtedly very at odds with the nature of democracy.³⁸ Considering that people's sovereignty is harmed twice in appointing non-definitive regional heads. On the one hand, the people do not get the opportunity democratically to nominate or elect a non-definitive regional head. Complementing this, the people cannot sue the President or the Minister if the non-definitive regional head appointed is not the people's will.³⁹

Third, the plaintiff's legal standing relates to who or which party has legal standing to be able to file a lawsuit. The party with legal standing is the only party with the right to file a

³⁵ Maftuh Effendi, 'Peradilan Tata Usaha Negara Indonesia Suatu Pemikiran Ke Arah Perluasan Kompetensi Pasca Amandemen Kedua Undang-Undang Peradilan Tata Usaha Negara', *Jurnal Hukum Dan Peradilan*, 3.1 (2018), 25 <https://doi.org/10.25216/jhp.3.1.2014.25-36>

³⁶ Hendry Julian Noor, Kardiansyah Afkar, and Henning Glaser, 'Application of Sanctions Against State Administrative Officials in Failure to Implement Administrative Court Decisions', *BESTUUR*, 9.1 (2021), 72 <https://doi.org/10.20961/bestuur.v9i1.49686>

³⁷ Firzhal Arzhi Jiwantara, 'Upaya Administratif Dan Penerapannya Dalam Penyelesaian Sengketa Administrasi', *Jurnal Jatiswara*, 34.2 (2019), 131-42 <https://doi.org/10.29303/jatiswara.v34i2.203>

³⁸ Franky K.H. Choi, 'How to Select Good Leaders in Asian Countries: The Case of China and Singapore', *Public Administration and Policy*, 24.3 (2021), 264-74 <https://doi.org/10.1108/pap-04-2021-0028>

³⁹ Stephen Gardbaum, 'Political Parties, Voting Systems, and the Separation of Powers', *The American Journal of Comparative Law*, 65.2 (2017), 229-64 <https://doi.org/10.1093/ajcl/avx030>

lawsuit at the Administrative Court.⁴⁰ If the party filing the lawsuit is a party that does not have legal standing, then automatically, a dispute cannot be tried. Referring to the state administrative dispute, the pattern for determining legal standing is the party directly harmed by a decision.⁴¹ In the case of appointing a non-definitive regional head, it is not clear who is the party that suffers a direct loss. In this context, the question arises as to who has the right to file a lawsuit against a decision by the President or Minister over a decision to appoint a non-definitive regional head.⁴²

Fourth, regarding the levels of courts. The PTUN institution is an institution that exercises judicial power to uphold law and justice. This institution is divided into three levels. The first level is called the Administrative Court, which functions as an institution that adjudicates at the *judex factie* stage and is located at the Regency/City level. The second level is PT TUN. This institution is a court domiciled in the Province and functions as an appellate-level court. Meanwhile, the third level is the Supreme Court. The Supreme Court is the third-level judicial institution in resolving state administrative disputes. Because all PT TUN decisions can appeal to the Supreme Court, or the Supreme Court is the culmination of all judicial processes on state administrative disputes. This level of state administrative dispute trial process is, of course, a level of the judicial process that is wildly inappropriate and eliminates the substance being submitted, considering that a judicial process with these three levels can take quite a long time.

For example, the term of office for a non-definitive regional head is only three months to two years. While the judicial process through state administrative disputes, there is no rule for how many years it must be decided so that the process can last up to three years. It means that there is a possibility that an administrative application will be submitted to the Administrative Court. Then the application will be processed starting from registration, preliminary hearing, withdrawal of a claim, lawsuit, and examination of evidence up to a judge's decision to be carried out within a time limit of more than one year. If the plaintiff or defendant is dissatisfied with PTUN's decision, they can continue the legal process at the appeal level at PT TUN. In contrast, the process at PT TUN is almost the same as the process at PTUN.

In addition, if two parties or one of the parties, both the plaintiff and the defendant, are dissatisfied with PT TUN's decision, they can file a lawsuit at the cassation level at the Supreme Court. The cassation process at the Supreme Court will almost certainly take a relatively long time. There is no certainty whether, within one year, it can be terminated or not. On the other hand, the state administration dispute regarding appointing a non-definitive regional head remains effective even though it is made the object of a lawsuit at the Administrative Court. It means that the President and Minister's decisions regarding the appointment of non-definitive regional heads remain in effect. Non-definitive regional heads are still inaugurated and carry out their daily duties even though the decision regarding their appointment is being processed at the Administrative Court. It happens

⁴⁰ Henrik Enroth, 'Governance', *European Journal of Social Theory*, 17.1 (2014), 60–76 <https://doi.org/10.1177/1368431013491818>

⁴¹ I Gede Yusa and others, 'Gagasan Pemberian Legal Standing Bagi Warga Negara Asing Dalam Constitutional Review', *Jurnal Konstitusi*, 15.4 (2019), 752 <https://doi.org/10.31078/jk1544>

⁴² Ken Victor Leonard Hijino and Hideo Ishima, 'Multi-Level Muddling: Candidate Strategies to "Nationalize" Local Elections', *Electoral Studies*, 70 (2021), 102281 <https://doi.org/10.1016/j.electstud.2021.102281>

because the principle of *presumtae ius tae causa* applies in a decision.⁴³ A decision is still considered valid and valid as it should be before the judiciary cancels it and revokes it by the President or the Minister who issued the decision (*contrarius actus*).⁴⁴

Thus, the judicial process through the PTUN, PT TUN, and MA administrative dispute mechanisms can lose objects because the decision from the judicial process can be determined when the term of office of the regional head filled by a non-definitive regional head has expired. For example, a non-definitive regional head is appointed to become governor for one year. The non-definitive regional head's term of office is only one year remaining, while the judicial process takes two years. Thus, decisions on state administrative disputes are issued when the object of the lawsuit is ineffective. In substance, the process through state administrative disputes cannot represent the community's sense of justice for the President/Minister's decision regarding appointing a non-definitive regional head.⁴⁵

Fifth, it is regarding the legal regime of special procedures. The judicial process through state administrative disputes in the case of non-definitive appointment of regional heads will be subject to the generally applicable procedural law in the judicial process at the State Administrative Court. This condition is undoubtedly a process that becomes the process of filling the position of the regional head, which is subject to the judicial regime that applies in general even though the process of filling public positions such as regional head, President, members of the People's Representative Council, Regional Representative Council, and Regional House of Representatives has its specificities so that it is released from the judicial regime in general. In the case of disputes over election results, where in the case of disputes over election results, the object of the dispute is the General Election Commission (KPU) decision regarding the General Election Commission Decree regarding the Determination of Votes Acquisition of General Election Results. That is, the object of the dispute is a decision of a state administrative official or has something in common with the object of a state administrative dispute. However, in terms of the legal process for disputes over the general election results, it is not subject to the judicial regime in general. Still, it is subject to a special election regime where the judicial process is not to the State Administrative Court but to the Constitutional Court.⁴⁶

Not only in the case of general elections but in the case of disputes over the results of regional head elections, a special procedural law regime is also carried out where in terms of the settlement process for disputes over the results of the election of Governors, Regents and Mayors, the judicial process is carried out by the Special Judicial Body. Even in the case of a type of dispute that is referred to as an electoral state administrative dispute as regulated in Article 154 of Law no. 10 of 2016, it is also not subject to administrative

⁴³ Vincent Suriadinata, 'Asas Presumptio Iustae Causa Dalam KTUN: Penundaan Pelaksanaan KTUN Oleh Hakim Peradilan Umum', *Refleksi Hukum: Jurnal Ilmu Hukum*, 2.2 (2018), 139–52 <https://doi.org/10.24246/jrh.2018.v2.i2.p139-152>

⁴⁴ Stephen B. Wicker, 'Surveillance and the Threat to Freedom of Association', *Journal of Information Security and Applications*, 55 (2020), 102643 <https://doi.org/10.1016/j.jisa.2020.102643>

⁴⁵ Stefan Magen, 'Philosophy of Law', in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2015), pp. 24–30 <https://doi.org/10.1016/B978-0-08-097086-8.63106-9>

⁴⁶ Nadia Fiorino, Nicolas Gavaille, and Fabio Padovano, 'Rewarding Judicial Independence: Evidence from the Italian Constitutional Court', *International Review of Law and Economics*, 43 (2015), 56–66 <https://doi.org/10.1016/j.irl.2015.05.002>

justice processes or state administrative disputes that apply in general. It is demonstrated by the process of state administrative disputes, which are regulated explicitly by special assemblies and by speedy procedural law. Even in state administration disputes in regional head elections, there is also a reduction in the level of judicial institutions. In the case of state administrative disputes in regional head elections, the judicial process can be directly submitted to PT TUN or does not have to go through the judicial process at PTUN. The appointment of non-definitive regional heads also applies special procedural law considering that the process of appointing non-definitive regional heads has the exact nature of filling public officials, primarily regional heads.

3.2. Legal Social Justice in Appointment Non-Definitive Regional Heads toward Welfare State

Judicial problems through state administrative disputes in settling non-definitive regional head appointments have proven to be a process that creates various implications and lacks legal certainty. The settlement process is not strictly regulated and forced to follow the general judicial process settlement flow.⁴⁷ Therefore, it is necessary to redesign the process of resolving administrative violations or disputes by appointing non-definitive regional heads. This redesign is essential to realize legal protection in establishing a non-definitive regional head. Without a redesign of the judicial process for the appointment of non-definitive regional heads, the principles of constitutional democracy or the rule of law adopted by Indonesia will be meaningless in terms of dealing with concrete legal dynamics in the nation's life and state.⁴⁸

Before mapping or bidding on the design of the form of justice for the appointment of a non-definitive regional head, the principles that must be the starting point in determining the model or design of the judiciary must first be studied. The design principles for appointing a non-definitive regional head must at least include the following: First, the judicial process for establishing a non-definitive regional head must be fast because it overlaps with the term of office of a non-definitive regional head which is very short. For example, the term of a person appointed as a non-definitive regional head with a working period of only six months, the judicial process for the appointment of the non-definitive regional head cannot last more than six months. Because if the process is more than six months, then the product of the judicial process will lose its object or cannot be followed up.⁴⁹

The principle of speedy justice is a principle of justice that is specifically enforced in the judicial process of several disputes or cases, such as in the process of resolving disputes over the results of the election for the President/Vice President, which is regulated for only fourteen days (Article 475 paragraph (2) of Law Number 7 of 2017 Concerning General election). The application of a quick judicial process in terms of resolving disputes over the appointment of regional heads is undoubtedly possible to do. In line with this, the process

⁴⁷ Guilherme Lambais and Henrik Sigstad, 'Judicial Subversion: The Effects of Political Power on Court Outcomes', *Journal of Public Economics*, 217 (2023), 104788 <https://doi.org/10.1016/J.JPUBECO.2022.104788>

⁴⁸ Salvador Santino F. Regilme, 'Contested Spaces of Illiberal and Authoritarian Politics: Human Rights and Democracy in Crisis', *Political Geography*, 89 (2021), 102427 <https://doi.org/10.1016/j.polgeo.2021.102427>

⁴⁹ Faisal Alshwabkeh and Mohammad Husien Almajali, 'The Influence of the Jurisprudence Administrative on the Cancellation Case: "Analytical Study"', *Heliyon*, 7.3 (2021), e06471 <https://doi.org/10.1016/j.heliyon.2021.e06471>

of appointing and disputes over non-definitive regional heads is a simple type of dispute. Because the court only hears disputes that meet the substance and procedural requirements.

Second, simple, simple justice principle is justice principles that are easy to understand. Of course, meaning that is easy to understand is a meaning that is still general and relative.⁵⁰ It is because everyone's understanding of a judicial process differs, so according to A, a process is considered simple. At the same time, according to B, it is still said to be complicated. Based on this condition, the middle way to take is through judicial design, in which the law and settlement flow are prepared with the lowest standard of legal understanding. It is unnecessary to have the such extensive and deep knowledge to understand the mechanism and all matters relating to the judicial process to appoint non-definitive regional heads.

Form, position, and registration process until the decision is made as easy as possible. Admittedly or not, what causes simple principles to be ignored in the judicial process in Indonesia is that people seeking justice are made difficult to understand procedures in a judiciary. There are no modules or detailed and sequential explanations that often confuse justice seekers about what to do. They do to be able to convene or undergo the judicial process.⁵¹ Third, first, and last. The judicial process for appointing a non-definitive regional head must also be the first and final. The first and last is the process for a lawsuit against the appointment of a non-definitive regional head, only one process so that the nature of the decision is final and binding. Fourth is constitutionality. The principle that must also underlie the judicial design of non-definitive regional head appointments is the principle of constitutionality. The principle of constitutionality here is that the judicial process must be referred to the constitution, especially the written constitution, as the fundamental law of a country.⁵² This constitutional principle is essential to ensure that the non-definitive settlement of disputes over the appointment of regional heads is in line with the teachings of constitutional democracy in Indonesia.

The principle of constitutionality is absolute to be used as a basis. It is related to the position of the regional head, which is regulated directly in the Indonesian constitution, namely Article 18, paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Based on this provision, each appointment of a definitive or non-definitive regional head must follow the values regulated by the constitution regarding election or appointment and even the judiciary. The principle of constitutional justice is a judicial process that can be pursued in two models. The judicial process is carried out by a judicial institution referred to as the executor of judicial power or adheres to the values of law enforcement as stated in the constitution.

The model through the judiciary regulated in the constitution is that the judicial process for resolving disputes over the appointment of regional heads is non-definitive through

⁵⁰ Lisa Hilbink and Matthew C. Ingram, 'Courts and Rule of Law in Developing Countries', in *Oxford Research Encyclopedia of Politics* (Oxford University Press, 2019) <https://doi.org/10.1093/acrefore/9780190228637.013.110>

⁵¹ Andrew J. Harding, 'Legal Traditions of Southeast Asia', in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2015), pp. 813–18 <https://doi.org/10.1016/B978-0-08-097086-8.86141-3>

⁵² Lanse Minkler and Nishith Prakash, 'The Role of Constitutions on Poverty: A Cross-National Investigation', *Journal of Comparative Economics*, 45.3 (2017), 563–81 <https://doi.org/10.1016/j.jce.2017.03.002>

judicial institutions which are explicitly mentioned in the constitution which include the Supreme Court, General Courts, Religious Courts, Military Courts, Administrative Courts, and Courts of Justice. Constitution (Article 24 of the 1945 Constitution of the Republic of Indonesia). Institutions explicitly referred to as judicial institutions can be given the authority to adjudicate non-definitive regional head appointment disputes. It means that the judicial institutions mentioned in the constitution can adjudicate regional head appointment disputes if the law delegates authority to one of these judicial institutions to adjudicate.

Fifth, independent, the independent or independent principle is a judicial principle that must also be attached to the regulation regarding dispute resolution for the appointment of non-definitive regional heads. This principle of independence is urgently needed to ensure that the judicial process runs fairly and is free from interference. The judicial process is only subject to the logic of law and justice. Admittedly or not, the judicial process for resolving disputes over the appointment of regional heads is non-definitive, risky/prone to various interventions, especially political interventions, considering that so many interests are intertwined or involved in it. The principle of being independent or independent lies on the institutional side and the person who will adjudicate. Institutionally, the institution that will adjudicate disputes over appointing non-definitive regional heads must be free from structural ties with the institution that sets non-definitive regional heads.⁵³

It is crucial, considering that if there is still a structural bond or relationship between the appointing institution and the adjudicating institution, the conflict of interest in the settlement process will not be achieved. Moreover, in the context of disputes over the non-definitive appointment of regional heads, the institution that appointed them will become the defendant. Complementing this, when referring to the principle of the division of powers of *trias politica*, it can be stated that the institution that appoints is the executive agency, and the one that will adjudicate is the judiciary.⁵⁴ The principle of independence is a principle that applies in general in the settlement of various disputes in Indonesia, where the court becomes a judicial institution.

This principle qualifies as an independent and independent branch of power as stated explicitly in Article 24 of the 1945 Constitution of the Republic of Indonesia, which states that "judicial power is an independent power to uphold law and justice." Referring to the principle of independence, the judicial process for disputes over appointing non-definitive regional heads can be submitted to existing judicial institutions such as the Supreme Court or the Constitutional Court. However, the judicial process can also be given to other institutions, such as the Special Judicial Body, which will be formed no later than 2024. The Sixth is being opened. The principle of an open judiciary in resolving disputes over the appointment of non-definitive regional heads is a must, considering that these disputes are public. Thus, public rights must be recognized and fulfilled through a judicial process that is open or accessible to anyone.⁵⁵ The judicial process for dispute resolution in the case of

⁵³ Ahmad Siboy and others, 'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 14–30 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.23>

⁵⁴ Matthieu Chemin, 'Can Judiciaries Constrain Executive Power? Evidence from Judicial Reforms', *Journal of Public Economics*, 199 (2021), 104428 <https://doi.org/10.1016/J.JPUBECO.2021.104428>

⁵⁵ Laura Goodwin and Vivek Maru, 'What Do We Know about Legal Empowerment? Mapping the Evidence', *Hague Journal on the Rule of Law*, 9.1 (2017), 157–94 <https://doi.org/10.1007/s40803-016-0047-5>

non-definitive appointment of regional heads may not be in a closed trial process. A closed judicial process will certainly reduce and even raise public suspicion through an honest and fair trial. When the trial process is carried out openly, the public, in general, can provide an objective assessment of the facts in the trial. An open trial process for appointing a non-definitive regional head is essential because, apart from being assigned a person who will occupy a public position. Moreover, it also ensures that in establishing a non-definitive regional head, the authorized official (President or Minister) is genuinely submissive. On the principle of professionalism, the person appointed as a non-definitive regional head is genuinely competent.

Admittedly or not, in several regions, non-definitive regional heads appointed by the Minister as acting Regents/Mayors or people appointed by the President as serving Governors are parties that often cause open political controversy, which the public suspects will be confirmed through an open hearing. If in an open court process, the President or Minister can provide a rational explanation for their choice of the person appointed as the regional head official. Then the public will give appreciation. On the other hand, if the President or Minister cannot show clear reasons or is dominated by political overtones in choosing someone to become a non-definitive regional head, antipathy from the public will practically arise, and the President/Minister must immediately correct his decision.⁵⁶

Seventh is the principle of equal treatment. The principle of being treated equally before the law and being heard fairly is the principle whereby all parties in proceedings at the judiciary must receive equal treatment so that the trial process will find objective facts and lead to a fair and legal verdict. The trial process is not in favor of the plaintiff or the defendant.⁵⁷ This principle is absolute in the judicial process for appointing a non-definitive regional head. In the trial process, the guarantee of equality of treatment is necessary because what is confronted is between the people and the authorities. In which the President and/or Minister will be the defendant.

Meanwhile, the plaintiffs are people who do not have access to power. In this judicial process, it can be concluded that this trial process is a trial between the authorities and civilians. In a situation like this, the suspicion that the judicial process does not provide equal treatment for the plaintiff and the defendant will be considerable. It is because the position of the ruler will be considered more substantial, considering that the judges are sure to have particular interests in the authorities. However, in the context of democracy and law in Indonesia, which continues to grow, this suspicion must be put aside considering that the *auditio at pattern parten* system has been relatively well established in the judicial process in Indonesia. It is evident from the many decisions of the President and Ministers that have been challenged in court. The court has sided with the people seeking justice rather than siding with those in power (the President and Ministers).

⁵⁶ Dharendra Wardhana, 'Decentralization, Democratization, And Social Protection In Indonesia: A Systematic Review of the Literature', *Jurnal Perencanaan Pembangunan: The Indonesian Journal of Development Planning*, 3.2 (2019), 164–84 <https://doi.org/10.36574/jpp.v3i2.73>

⁵⁷ Fiona M. Kay, 'Lawyers: Social Organization of the Profession', in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2015), pp. 628–34 <https://doi.org/10.1016/B978-0-08-097086-8.86065-1>

3.3. Design of Legal Social Justice in Appointment Non-Definitive Regional Heads Based on Pancasila

Democracy is a system of government from the people, for the people, and by the people, where everyone can take part in decisions that will affect their life in the state.⁵⁸ Democracy is built on two principles, namely, self-government and the people's establishment or making of laws directly.⁵⁹ Charles Tilly suggested that there are four main types of democracy definitions, namely constitutional, substantive, procedural, and process-oriented. Concerning filling positions, democracy is shown by the implementation of direct election of government officials who represent the community in the concept of a democratic state.⁶⁰

Pancasila democracy means people's sovereignty democracy which is imbued with and integrated with other precepts. It means that in exercising democratic rights, one must always be accompanied by a sense of responsibility to God. Because Pancasila is a "way of life" in which Pancasila is practiced and used as a guide for all daily activities in all fields, meaning that all behavior and actions must be imbued with Pancasila values. The concept of Pancasila Democracy prioritizes deliberation to reach an agreement/*mufakat*. However, leaders are not allowed to act if a 'unanimous agreement' is not reached. Therefore, the People's Consultative Assembly provided a solution to overcome the deadlock through voting. It follows the procedure required by Article 2 paragraph (3) and Article 6 paragraph (2) of the 1945 Constitution.

Pancasila in democratic life is the fundamental value or sign for national legal politics. Therefore, the appointment of non-definitive regional heads, which is carried out without going through general elections, needs more attention. Whether in its implementation, there are violations since the administrative stage. The people are entitled to a 'constitutional' regional head. Enforcement of administrative violations must be carried out to safeguard people's rights in a democracy. In law enforcement, carried out by an authority. Law enforcement in Indonesia is still heavily influenced by legal positivism, where law enforcement takes precedence, sometimes justice is not appropriately upheld, but law enforcement is appropriate.⁶¹ That is, law enforcement does not necessarily uphold justice, nor does upholding justice necessarily enforce the law according to the rule of law.⁶²

Furthermore, the settlement of administrative violations in the appointment of regional heads is non-definitive. The more in-depth question is, what form of the judicial institution

⁵⁸ Camden Kelliher and others, 'Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Disputes', *Election Law Journal: Rules, Politics, and Policy*, 18.3 (2019), 297–308 <https://doi.org/10.1089/elj.2018.0535>

⁵⁹ Ludvig Beckman, 'Popular Sovereignty Facing the Deep State. The Rule of Recognition and the Powers of the People', *Critical Review of International Social and Political Philosophy*, 24.7 (2021), 954–76 <https://doi.org/10.1080/13698230.2019.1644583>

⁶⁰ Laurence Whitehead, "Aversive" Democracy, "Contentious" Politics and "Agonistic" Populism: Comparative Experience and Implications for Contemporary North Africa', *The Journal of North African Studies*, 25.6 (2020), 881–95 <https://doi.org/10.1080/13629387.2019.1644925>

⁶¹ William A. Galston, 'The Populist Challenge to Liberal Democracy', *Journal of Democracy*, 29.2 (2018), 5–19 <https://doi.org/10.1353/jod.2018.0020>

⁶² Arsyad Aldyan and Abhishek Negi, 'The Model of Law Enforcement Based on Pancasila Justice', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 178–90 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.51>

can answer this issue of appointment? The judicial process for appointing a non-definitive regional head should be given to two judicial institutions, namely the Constitutional Court. Or, the author provides another option, settling administrative violations by establishing a Special Judicial Body for administrative violations and appointing non-definitive regional heads. This body can be placed under the Bawaslu, with the specificity of completing the appointment of regional heads without going through elections. It should be noted these two judicial institutions are representative judicial institutions to adjudicate disputes over the appointment of non-definitive regional heads because both are types of institutions that can fulfill the principles of judicial institutions as previously described.⁶³

In particular, the choice to place the authority to adjudicate disputes over the appointment of regional heads to the Special Judicial Body is based on several factors. First, the Special Judicial Body was explicitly formed with the competence to adjudicate disputes over regional head election results. It means that this institution is only given a single authority. This provision is regulated in Article 157 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors, which states that the Special Judicial Body adjudicates the authority to adjudicate cases of disputes over election results. This institution was mandated to be formed no later than before the simultaneously national and regional head elections in 2024.

Thus, when it is to be formed, the Special Judicial Body can add its authority. Namely, those whose authority is only to adjudicate disputes over election results are also added to the authority to adjudicate disputes over the appointment of non-definitive regional heads. Thus, the Special Judicial Body will automatically have two powers: adjudicating disputes over election results and adjudicating disputes over the appointment of non-definitive regional heads. One judicial institution with two authorities is still relatively effective in the judicial system in Indonesia, considering that various judicial institutions in Indonesia have more than one authority.⁶⁴

Second, strengthening the Regional Government regime. Placing the authority to adjudicate non-definitive regional head appointment disputes to the Special Judicial Body will also further enhance the position of regional head filling in the regional government regime. Recognized or not, the position of the regional head is a position that is within the regional government regime. It is evidenced by the regulation regarding the appointment of the regional head, which is regulated in the chapter on regional government in the constitution. Filling the regional head position regime is in the regional government regime. Moreover, the decision of the Constitutional Court Number 97/PUU-XI/2013, which states that the election of regional heads to elect Governors, Regents, and Mayors is not part of the general election regime, which is national but rather an integral part of the regional government regime so that the settlement of disputes the results of regional head elections are subject to the regional government regime.

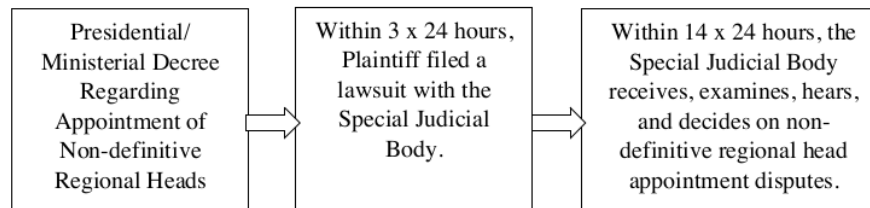
⁶³ Ahmad Siboy and Sholahuddin Al-Fatih, 'The Logic Position of State Emergency Law in the Implementation of Regional Head Elections during the Covid-19 Pandemic', *Unnes Law Journal*, 8.1 (2022), 65–86 <https://doi.org/10.15294/ulj.v8i1.55354>

⁶⁴ Cole J. Harvey, 'Who Delivers the Votes? Elected versus Appointed Local Executives, Election Manipulation, and Natural Support for Ruling Parties', *Electoral Studies*, 76.November 2021 (2022), 102455 <https://doi.org/10.1016/j.electstud.2022.102455>

Based on these two legal bases, when the authority to adjudicate non-definitive regional head appointment disputes is given to the Special Judicial Agency, it will further harmonize all matters related to the regions.⁶⁵ Both the process of filling definitive and non-definitive regional head positions is the regime of regional government. The Special Judicial Body is established to adjudicate disputes regarding filling regional head positions through election results. Thus, it is also given the authority to adjudicate non-definitive regional head appointment disputes. Then it can still be said to be in one regime flow or the line regarding filling, entitled to sit as head of government at the regional level.⁶⁶

Third, the Special Judicial Body is an institution that, at the time of the dispute over the appointment of a non-definitive regional head, was an institution with no activity. It is because the single authority granted by law to the Special Judicial Body automatically makes this body only active when disputes arise over the results of regional head elections. Meanwhile, disputes over the results of regional head elections occur every time an election is held every five years. It means that the Special Judicial Body only works once every five years. Additionally, non-definitive regional heads were appointed because regional head elections were not currently held.

When an election is not held, automatically, there are no cases that the Special Judicial Body must try. This condition will also make the judicial process at the Special Judicial Body run much faster because the Special Judicial Agency will only focus on adjudicating the appointment of non-definitive regional heads. It differs from other judicial institutions, which have many disputes that must be tried simultaneously. Settlement Chart 1. for the Appointment of Non-Definitive Regional Heads by the Special Judicial Body



The filling in strategic positions will hinder the democratic process. In which the people do not have representation in government. The design for resolving administrative violations in filling the post of non-definitive Regional Head through the Special Judicial Body set at *Bawaslu* can provide a more straightforward, faster, and cheaper dispute resolution. It certainly can provide legal certainty for vacancies. The implication is, of course, on the implementation of good governance functions, in line with the function of Pancasila both in describing Indonesia's goals and in achieving the purpose of administering the state.

⁶⁵ Arif Budy Pratama and others, 'Do Smart Cities Perform Better in Governing the COVID-19 Crisis? Empirical Evidence from Indonesian Cities', *Urban Governance*, 3.1 (2023), 58–66 <https://doi.org/10.1016/j.ugj.2023.02.003>

⁶⁶ Hassan Nasir Mirbahar, 'Flawed Laws, Flawed Elections: Local Elections in Pakistan', *Election Law Journal: Rules, Politics, and Policy*, 18.1 (2019), 1–15 <https://doi.org/10.1089/elj.2017.0479>

4. Conclusion

The filling position of regional head should be done through a democratic direct election process. It ensures that the elected regional head represents the community so that a welfare state can truly be realized. However, in practice, there is a non-definitive pattern of filling the post of the regional head. This process often creates administrative problems, which harm the interests of the people so that some parties challenge the decisions of the President or Minister. Meanwhile, arrangements regarding the judicial process for appointing non-definitive regional heads have not been specifically regulated. Therefore, the resolution of the non-definitive regional head appointment dispute is generally submitted to the state administration. It is not following the non-definitive regional head appointment dispute resolution, which has characteristics. In the USA, mayor elections are carried out through direct elections, and indirect elections are known as presidential elections. Election disputes were resolved through the courts, as in Indonesia today. In Australia, mayor elections were once carried out by appointment, but now direct elections are carried out. In contrast to Indonesia, election dispute resolution is resolved by the Electoral Management Bodies. Comparing the two countries and also theory, this paper's findings are that a design that can be chosen for the judicial process for appointing a non-definitive regional head is proposed, namely by granting authority to *Bawaslu* to resolve administrative violations through the Special Court mechanism. The existence of this mechanism can better resolve administrative disputes regarding the appointment of non-definite regional heads, and of course, quickly. If in the appointment of hundreds of non-definitive regional heads in the future, there is a dispute that hurts the sense of democracy of the people, and then a solution will be found immediately. The rights of the people in the welfare state will be protected.

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