



DOI: <https://doi.org/10.38035/sijal.v2i1>

Received : August 06<sup>th</sup>, 2024 , Revised : September 02<sup>nd</sup>, 2024, Publish: September 06<sup>th</sup>, 2024  
<https://creativecommons.org/licenses/by/4.0/ta>

## Legal Politics of Regional Head Offices for The 2019-2024 Period After The Constitutional Court Decision Based on Constitutional Theory

Indra Lorenly Nainggolan<sup>1</sup>

<sup>1</sup>Faculty of Law, Bhayangkara University, Greater Jakarta, Indonesia,  
[indra.nainggolan@dsn.ubharajaya.ac.id](mailto:indra.nainggolan@dsn.ubharajaya.ac.id)

Corresponding Author: [indra.nainggolan@dsn.ubharajaya.ac.id](mailto:indra.nainggolan@dsn.ubharajaya.ac.id)<sup>1</sup>

**Abstract:** Article 201 paragraph 5 of Law Number 10 of 2016 has limited the term of office of regional heads and deputy regional heads who are appointed for the 2019 – 2023 term of office. Article 3 of Law Number 10 of 2016 confirms that elections are held every 5 (five) years. The term of office of regional heads and deputy regional heads is 5 years. The provisions of Article 201 deny this and violate the provisions of Article 18 paragraph 4 and Article 28D paragraph 1 of the 1945 NRI Constitution. This research uses normative juridical and uses conceptual, case and statutory approaches. The Constitutional Court's argument is that every position of regional head and deputy regional head is mandatory for 5 (five) years. Anything less is a violation of the constitution and democracy. The majority principle in democratic principles guarantees the sovereignty of the people running with the rule of law in the constitution, especially the protection of human rights. The voice of the majority of the people must not be co-opted with the political and legal policies of law makers in the name of the people. The transitional legal politics of the policy of simultaneously filling the positions of regional head and deputy regional head must be improved in the space of democracy and the rule of law. The principle of guaranteeing freedom and equal treatment before the law in Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia, emphasizes that state power must be exercised in a way that does not violate the constitution.

**Keywords :** General elections, Regional heads, Legal politics.

### INTRODUCTION

The regional head is a public position that is directly elected by the people. people. The statement is expressly stated in Article 18 paragraph 4 of the 1945 Constitution of

the Republic of Indonesia which reads " Governors, Regents, and Mayors as heads of provincial, district, and city governments are elected democratically ". The term democratic can be done by direct or indirect. There are important reasons why direct regional head elections are important:

- a) Regional head elections will increase the accountability of local political elites, including regional heads;
- b) Regional head elections will create political stability and government effectiveness at the local level ; and
- c) The election of regional heads will strengthen and improve the quality of national leadership selection because it will open up more opportunities for the emergence of national leaders who come from the grassroots and/or regions .

The legitimacy of direct elections will bring legal consequences to the regional heads produced. Community participation in determining the choice of regional leaders has improved the quality of regional head leadership. All of his duties and policies will be accounted for before the community during his leadership. After the regional head election, his position is also protected by the people's vote.

Article 3 of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law , states that "elections are held every 5 (five) years simultaneously throughout the territory of the Unitary State of the Republic of Indonesia. The interpretation of this norm confirms that the term of office of the regional head in one election period is 5 (five) years.

However, in the provisions of Article 201 paragraph 5 of Law Number 10 of 2016, it states that "The Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor elected in 2018 shall serve until 2023". There has been a limitation of the norm which should be within a span of five years, to be less than it should be. In the context of the constitution, there has been a reduction in the sovereignty of the people which must be carried out for five years, there is a conflict between the sovereignty of the law (read: law). This is what constitutes a violation of Article 18 paragraph 4 of the 1945 Constitution of the Republic of Indonesia.

In addition, there is also a violation of Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which states that, " Everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law ". The meaning of this norm is that all governance must be carried out within the framework of democratic principles and legal principles, including the constitutional principle. Regarding fair legal certainty, Rawls' opinion can be used , which concludes that there are 2 (two) principles of justice, namely :

- a. Everyone should have an equal right to the widest possible system of basic *liberties* ;
- b. Social and economic distinctions should be arranged so as to be of greatest benefit to those most advantaged and closely connected with offices and positions open to all on the basis of reasonable equality of opportunity.

Based on the opinion regarding recognition, guarantee, protection, and certainty of fair law , it must be placed on equal freedom for everyone to occupy public government office. Equal opportunity is a fundamental characteristic in filling public office. Filling the position of regional head has the same meaning, that the results of the general election that has taken place and produced a certain regional head, must be treated equally for him.

The provisions of Article 201 paragraph 5 of Law Number 10 of 2016 have limited the results of regional head elections which were previously five years, to be inappropriate. Constitutional Court Decision Number 143/PUU-XXI/2023 is a new legitimacy that regional heads resulting from the 2018 regional head elections only serve until 2023 when their term should have ended in 2024. In Constitutional Court Decision Number 143/PUU-XXI/2023, the judge granted part of the request. The consequence of its granting is that the regional head official who was previously dismissed and replaced with an acting regional head, returns to occupy the remaining term of office for a total of 5 (five) years.

The Constitutional Court's argument in its ruling, that regional heads and deputy regional heads elected in 2018 and inaugurated in 2019, then the calculation of the 5 (five) year term of office will be completed in 2024. The Constitutional Court considers that co-optation of the term of office of regional heads and deputy regional heads is not permissible. In its ruling, the Constitutional Court stated that the vacancy of the regional head/deputy regional head position which should and should be sufficient, is only a span of 1 (one) month before the national simultaneous voting day. In such a perspective, there is a conflict between legal sovereignty and people's sovereignty in the vacancy of the regional head position. So it can be interpreted that the legal policy of the term of office of regional heads and deputy regional heads in Article 201 paragraph 5 of Law Number 10 of 2016, gives rise to homework for lawmakers. The Constitutional Court opens up space for improving the legal policy of the position of regional heads and deputy regional heads.

The legal policy of filling regional head positions after the Constitutional Court Decision Number 143/PUU-XXI/2023 is an interesting note. Because efforts to elect regional heads simultaneously are a separate homework. So it is necessary to analyze the impact of the Constitutional Court decision. The problems that will be raised are: *First*, how is the legal policy of regional head positions in Law Number 10 of 2016 after the Constitutional Court Decision Number 143/PUU-XXI/2023 based on constitutional theory? *Second*, what are the legal consequences of the re-appointment of regional head officials for the remainder of their term of office?

## **METHOD**

This study uses a normative legal research method, to gain a comprehensive understanding of the legal consequences of the re-election of regional heads for the remaining term of office in 2019. Normative legal research is based on the view that it is necessary to understand and interpret positive or written law, legal principles, legal doctrines, legal concepts and others. The approaches used are the conceptual approach and the case approach. The conceptual approach is a study that examines and analyzes various legal concepts related to regional head elections, regional government, and the position of regional head. While the case approach is to examine the Constitutional Court Decree Number 143/PUU-XXI/2023 which is confronted with constitutional theories and legal politics. To support this research, secondary legal data is used with primary legal materials, namely the 1945 Constitution of the Republic of Indonesia and Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law.

## RESULTS AND DISCUSSION

The discussion will start from an understanding of legal politics. M. Mahfud MD defines legal politics into two main parts, namely: *First*, legal development which is based on the creation and renewal of legal materials so that they can be in accordance with needs. *Second*, the implementation of existing legal provisions including the affirmation of the function of institutions and the development of law enforcers. The definition of legal politics was also put forward by Satjipto Rahardjo that legal studies are directed at *ius constitu tum* (law that must apply) and are a substantial part of legal science.

Padmo Wahjono, is of the view that legal politics is the policy of state administrators which is fundamental in determining the direction, form and content of the laws that will be formed and what will be used as criteria for punishing something. Meanwhile, Sunaryati Hartono also expressed the meaning of legal politics, Legal Politics as a tool or means and steps that can be used by the government to create the desired national legal system and with this national legal system the ideals of the Indonesian nation will be realized.

Based on the description above, the elements of legal policy include various things, including:

- a) Legal policy of state administrators;
- b) Determining the ideals of the country;
- c) For the future.

Every state policy in an effort to form a legal system is a legal policy. The state policy in question includes all powers of state institutions, both legislative, executive, and judiciary in accordance with their duties and responsibilities. The legal policy of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, is clearly stated in the dictum section considering. It is stated that in order to guarantee that the election of Governors, Regents, and Mayors is carried out democratically as mandated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, the sovereignty of the people and democracy from the people, by the people, and for the people must be respected as the main requirements for the implementation of the election of Governors, Regents, and Mayors.

The basis for the implementation of regional head elections is to support people's sovereignty through democratic regional head elections. Jean Jacques Rousseau defines people's sovereignty as based on *Volonte Gener ale* and is expressed in the form of laws with the following characteristics:

- a) Unity : *the* spirit of the people who have the right to rule and want to be governed is one;
- b) Unanimous, not divided (*i ndivisible*): in a royal state only the king, on the other hand, if sovereignty rests with the people, only the people have the right to exercise it;
- c) May not be submitted (*inalienable*);
- d) Permanent, unchanging (*imprescriptible*), meaning that sovereignty is in the hands of the people

Popular sovereignty is the highest power of the people, which is interpreted as the process of attribution, delegation and mandate of power owned must be empirical, besides being logical/reasonable, methodologically carried out in certain ways, systematic with

full planning, passing through certain phases and stages can be measured its achievements, realistic, there must be a match between what is aspired to, desired, what is desired to be implemented and realized in the future. The idea of popular sovereignty that is often used is the opinion of John Locke (1632-1704), regarding his rejection of the absolute power of the king. That humans since birth have basic rights that cannot be reduced under any circumstances. The formation of a state is due to the existence of an agreement between its citizens with the aim of guaranteeing basic rights. The legal consequence is that there is no transfer of rights from individuals to the state, so that the state is absolutely prohibited. In the context of Indonesia, according to Bung Hatta, popular sovereignty means a people's government, where the government is carried out by leaders who are trusted by the people.

The legitimacy of the people towards their leaders is a characteristic of a government with people's sovereignty. People's participation in choosing their leaders is the main thing, besides that, the people also supervise all policies formed by the leaders they have chosen. Supervision is carried out to avoid their actions leading to arbitrariness, even absolutism. The series of community involvement from the beginning of the election of leaders, making policies, until the end of their term of office is a fundamental characteristic of the principle of people's sovereignty.

The pattern of government is subject to democratic principles. These principles serve as guidelines in running a government that is subject to the constitution. SW Couwenberg stated that there are democratic principles that underlie the rule of law ( *rechtstaat* ) as the basis for government policy, namely:

- a) principles of political rights;
- b) majority principle;
- c) principle of representation;
- d) principle of accountability;
- e) public principle.

In line with Couwenberg's opinion, the principle of accountability is the government's obligation to submit every policy to be monitored and assessed by the public, including the formation of government policies while in office. So that the general election process is one form of accountability of the regional head who will be elected before the people. The people will see who the best regional head candidate is to be elected and is worthy of leading their region. If there is a regional head candidate who is running again to be elected, the people will assess and ensure whether the person is worthy of continuing his leadership, or otherwise less than optimal.

This also includes concretizing the words of Article 18 paragraph 4 and Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia, the concretization must not violate the principles of democracy, in addition to the legal principles inherent in the rule of law. Limiting the term of office of regional heads elected in the 2018 regional head elections in article 201 paragraph 5 of Law Number 10 of 2016 , is actually contrary to legal principles and democratic principles.

The principle of guaranteeing freedom and equal treatment before the law in Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia, emphasizes that state power must be exercised in ways that do not violate the constitution. One of the principles in a state of law is the protection of human rights. The principle of human rights is contained in Articles 28 to 28J of the 1945 Constitution of the Republic of Indonesia. Norms in laws that are not in accordance with the principle of human rights, in themselves have violated the constitution.

The principle of majority in democracy, includes the participation of the people in their choice of regional heads through general elections. The majority of the people's votes through general elections should not be simply eliminated. The people have chosen, the people have determined their participation in their leaders, then further restrictions on the choices that have been determined by the lawmakers are a violation of democracy and a violation of the constitution. The legitimacy of the people should not be simply limited by the lawmakers. The provisions of Article 201 paragraph 5 of Law Number 10 of 2016 have violated the principle of majority as regulated in the constitution. The existence of the people's voice is stronger in position compared to the representative institutions that form laws, even in situations in the name of the people. The people's voice through direct regional head elections has a more constitutional democratic value compared to the restrictions imposed by the lawmakers.

In the Constitutional Court's Decree Number 143/PUU-XXI/2023, the Constitutional Court agreed that the term of office of regional heads should remain 5 (five) years in one period, starting from the inauguration, not at the start of the regional head election stages. There should be no reduction in the term of office of regional heads and deputy regional heads in any form. It further states the following:

“...regional heads/deputy regional heads are given a term of office of 5 (five) years, the calculation of which begins from the time the regional head/deputy regional head is inaugurated. This means that, in general, the calculation of the term of office of the regional head/deputy regional head begins from the inauguration, not based on the time the election or voting is carried out, except as expressly regulated in certain norms that the term of office is not exactly 5 (five) years.”

The Constitutional Court considered that the 5 (five) year term of office is non-negotiable, this concerns the principle of democracy in a country of law. The majority of people's votes may not be converted and reduced to a term of office below 5 (five) years. The emergence of such problems is caused by regional heads or deputy regional heads who were elected in the 2018 election but were only inaugurated in 2019. This is because the term of office of the previous regional head or deputy regional head only ended in 2019. The provisions of Article 201 paragraph 5 of Law Number 10 of 2016 actually do not regulate the provisions of regional heads or deputy regional heads whose terms of office end in 2019. So there is a merger of regional heads whose terms of office began in 2018 and those who were inaugurated in 2019, serving simultaneously. It is further stated as follows:

“...Article 201 paragraph (4) of Law 10/2016 implicitly states that the existence of regional heads/deputy regional heads whose terms of office end in 2019 is not regulated separately in relation to Article 162 paragraph (1) and paragraph (2) of Law 10/2016. As a result, regional heads/deputy regional heads who were just inaugurated in 2019 were “forced” to follow the terms of office of regional heads/deputy regional heads who were inaugurated in 2018. Moreover, those who were inaugurated in 2019 were not due to experiencing a concrete event that caused them to be inaugurated late, but the regional heads/deputy regional heads were inaugurated because the terms of office of the previous regional heads/deputy regional heads only ended in 2019.”

The Constitutional Court assessed that there were actually unfinished issues in the formation of Law Number 10 of 2016, for simultaneous regional head elections. The

problem that emerged again was that the transitional arrangements for simultaneous regional head elections must be followed by the formation of norms for the inauguration of regional heads and their deputies. The Constitutional Court assessed that Law Number 10 of 2016, only regulates norms related to the inauguration of regional heads and deputy regional heads. Furthermore, it is stated as follows:

“...transitional arrangements related to simultaneous voting cannot ignore arrangements related to the inauguration of regional heads and their deputies. Therefore, arrangements regarding simultaneous voting must be followed by norms that regulate simultaneous inaugurations.”

The merger of the 2018 regional head and deputy regional head elections for the 2018-2023 and 2019-2024 terms, each must be placed in a 5 (five) year term. The Constitutional Court considered that the 2019-2024 regional head term specifically violated the constitution, conversely the 2018-2023 regional head and deputy regional head terms should not be until 2024. It remains with a 5 (five) year term limit. It further stated the following:

“...to appoint acting regional heads so that there is no vacancy in the position of regional head/deputy regional head based on the provisions of the principles of democracy and the rule of law, namely 1 (one) month before the "H" day of the national simultaneous voting which applies to regional heads/deputy regional heads whose terms of office pass the day of the simultaneous voting carried out in 2024. For regional heads and deputy regional heads whose terms of office end before 1 (one) month before the simultaneous voting in 2024, their terms of office end 5 (five) years from the inauguration.”

The various considerations of the Constitutional Court are the issues of the legal political work of the legislators regarding the implementation of the principle of accountability in democracy. The Constitutional Court's decision returns that the principle of democracy in Law Number 10 of 2016 is upheld. There must be no violation of the principle of majority in filling the positions of regional head or deputy regional head. There has been legal uncertainty in Article 201 paragraph 5 of Law Number 10 of 2016. Furthermore, the transition period for the election of regional heads and deputy regional heads which will later be combined nationally, must consider the term of office of regional heads and deputy regional heads for 5 years. The legal politics of the period of Article 201 paragraph 5 of Law Number 10 of 2016 remains guided by the principles of democracy and a state of law that guarantees the protection of human rights. Legal politics as a state policy is legally justified in the constitution. However, its implementation remains within the corridor of democratic values.

## **CONCLUSION**

The legal policy of the term of office of regional heads and deputy regional heads for 2019-2023 has violated the principles of democracy related to the principle of majority and the principle of accountability. The principle of majority guarantees the sovereignty of the people running with the constitution, especially the protection of human rights. The voice of the majority of the people must not be co-opted by the legal policy of lawmakers in the name of the people. The transition policy of filling the positions of regional heads and deputy regional heads simultaneously must be improved.

The concretization of the wording of Article 18 paragraph 4 and Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia, is understood differently in Article 201 paragraph 5 of Law Number 10 of 2016. The Constitutional

Court's envoy Number 143/PUU-XXI/2023 has returned the issue of the transition of the term of office of regional heads and deputy regional heads for 2019-2023 which violates the sovereignty of the people and the sovereignty of the law.

The rule of law on the principle of guaranteeing freedom and equal treatment before the law in Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia, emphasizes that state power must be exercised in ways that do not violate the constitution. One of the principles in a state of law is the protection of human rights. The principle of human rights is contained in Articles 28 to 28J of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's envoy Number 143/PUU-XXI/2023 has returned norms in laws that are not in accordance with the principles of human rights, so that there are no losses and violations of the constitution.

## REFERENCE

- Ali Marwan Hsb., Pemilihan Kepala Daerah Yang Demokratis Berdasarkan Putusan Mahkamah Konstitusi Nomor 97/PUU-IX/2013, *Jurnal Legislasi Indonesia*, Volume 13, Nomor 3.
- Anita Anita., Politik Hukum Dalam Penegakan Hukum Di Indonesia, *Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia*, Volume 2, Nomor 1.
- Azmi., Kedaulatan Rakyat Dalam Perspektif Negara Hukum Yang Berketuhanan, *Alqalam Jurnal*, Volume 34, Nomor 1.
- Budisetyowati, Dwi Andayani dan Indra Lorenly Nainggolan., Multiple Legislative Candidates in Different Political Parties: Morality in the Perspective of Philosophy of Law, *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, Volume 23, Nomor 2, Juni 2024.
- Ferry Irawan Febriansyah., Keadilan Berdasarkan Pancasila Sebagai Dasar Filosofis Dan Ideologis Bangsa, *DIH Jurnal Ilmu Hukum*, Volume 13, Nomor 25.
- Khairul Fahmi., Prinsip Kedaulatan Rakyat Dalam Penentuan Sistem Pemilihan Umum Anggota Legislatif, *Jurnal Konstitusi*, Volume 7, Nomor 3.
- Mia Kusuma Fitriana., Peranan Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia Sebagai Sarana Mewujudkan Tujuan Negara, *Jurnal Legislasi Indonesia*, Volume 12, Nomor 2.
- Nainggolan, Indra Lorenly., "Pengawasan Legislasi Daerah Oleh DPD: Tantangan Era Disrupsi Hukum," *Salam: Jurnal Sosial Dan Budaya Syar-i*, volume 9, nomor 1.
- Nainggolan, Indra Lorenly dan Nina Zainab., Constitutional Values And Judges Morals In The Decision of The Constitutional Court Number 90/PUU-XXI/2023: Review of The Flow of Natural Law, *Jurnal Krtha Bhayangkara*, Bolume 18, Nomor 1, April 2024.
- Sodikin., Kedaulatan Rakyat Dan Pemilihan Kepala Daerah Dalam Konteks Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, *Jurnal Cita Hukum*, Volume 1, Nomor 1.
- Sopiani & Zainal Mubaroq., Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, *Jurnal Legislasi Indonesia*, Volume 17, Nomor 2.
- Undang Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang Undang Nomor 10 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-



Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota  
Menjadi Undang-Undang.  
Putusan MK Nomor 143/PUU-XXI/2023.