

Supervising Acting Regional Heads: A Linkage of Central Government and Regional Legislative Council Supervision Function

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Abstract: Simultaneous general elections will be held on November 27, 2024, to elect Regional Heads who officially end in 2022 and 2023 and have not participated in the first-period simultaneous election in 2020. The government directly appoints Acting Regional Heads to fill the office temporarily, as regulated in Article 201 paragraph (9) of Law No. 10/2016. This research analyzes the supervision system for Acting Regional Heads, which involves the role of the Central Government and Regional Legislative Council (DPRD). The result shows that the Minister of Home Affairs comprehensively evaluated Acting Regional Heads' performance without involving the DPRD's supervisory function. However, the Acting Regional Head is as authoritative as the Regional Head, as stated in Article 15, paragraph (1) of Minister of Home Affairs Regulation No. 4/2023 (Permendagri No. 4/2023). This research suggests reconstructing Permendagri No. 4/2023 to enhance DPRD's authority to oversee Acting Regional Heads' performance as an additional report used by the Minister of Home Affairs to evaluate Acting Regional Heads.

1. Introduction

The Republic of Indonesia is a unitary state based on the principle of decentralization in implementing governance in the regions. This principle gave birth to the meaning of autonomy, which is the transfer of authority in implementing government in the regions. The district/city government carries out its government based on the principle of autonomy.¹ One problem that arises from simultaneous General Elections (Pemilu) is managing the vacancies for Regional Head officials toward the 2024 Simultaneous Regional Head Elections (Pilkada). Several regions will run for vacancies for Regional Head because their office ended in 2022 and 2023. To fill the vacancy, the legislators provided a solution by appointing Acting Regional Heads (Acting Governor, Acting

¹ Arie Elcaputera, "Kewenangan Pengawasan Pemerintah Provinsi Terhadap Penyelenggaraan Pemerintahan Kabupaten/Kota Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah", *JURNAL AL IMARAH: JURNAL PEMERINTAHAN DAN POLITIK ISLAM* Vol 6, No 1 (2021), DOI: <http://dx.doi.org/10.29300/imr.v6i1.2481>.

Regent, and Acting Mayor) before the upcoming simultaneous regional elections on November 27, 2024.² An Acting Regional Head appointing process is one of several methods to fill a head position in a region. Principally, every filling of the position of Regional Head, whether through election or appointment, must be conducted democratically. However, the appointing process of Acting Regional Heads tends to face criticism and rejection from the public. For example, the Governor of Southeast Sulawesi refused to appoint three Acting Regional Heads because of a mismatch with the names proposed by the Minister of Home Affairs.³ Similarly, North Maluku Youth Solidarity (SPMU) protested against the Minister of Home Affairs for ignoring the Acting Regional Head proposed by the Governor of North Maluku.⁴ It occurred due to a lack of public legitimacy, indicating the deterioration of democracy in Indonesia. The appointment itself also disregards the involvement of the Regional Legislative Council (DPRD).

The authority of the Provincial DPRD and Regency/City DPRD in nominating Regional Head Officials is regulated in Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors (hereinafter referred to as Permendagri No. 4/2023). For the record, the Minister of Home Affairs Regulation was established on April 4, 2023, even though the process of appointing Acting Regional Heads began in 2022. From 2022 to April 4, 2023, 101 Acting Regional Heads were appointed; 7 Acting Governors and 94 Acting Regents/Mayors.⁵ It shows that the Acting Regional Heads' appointment from 2022 until April 4, 2023, does not legitimize DPRD involvement. The promulgation of the Permendagri No. 4/2023 gave the Provincial DPRD a legal basis to nominate three candidates who meet the Ministry's requirements through its Speaker of Council.⁶ Furthermore, at the regency/city level, the Regency/City DPRD can nominate three candidates through its Council's Speaker for Acting Regent and Acting Mayor compatibly.⁷

After the proposal stage, the next phase is discussing candidates. Both institutions propose to appoint the Acting Regional Head. The main issue is selecting six proposed candidates by the Minister of Home Affairs and DPRD to become three candidates running for Acting Regional Head. A problem may arise: instead of involving the DPRD in discussing candidates, the Minister of Home Affairs contrarily involves Ministries or non-ministerial government institutions. DPRD's absence from discussing candidates for Acting Regional Head has resulted in the loss of its supervisory function. Then, how is the supposed mechanism for appointing Acting Regional Heads to ensure an open, transparent, and accountable procedure adheres to democratic principles without involving the DPRD's supervisory function? This running process shows that appointing Acting Regional Heads has been performed but only provides a small oversight function for the DPRD.

² Lampiran Peraturan Komisi Pemilihan Umum Nomor 2 Tahun 2024 tentang Tahapan dan Jadwal Pemilihan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, Serta Walikota dan Wakil Walikota Tahun 2024.

³ Irfan Amin, "DPR Minta Gubernur Tak Mnolak Lantik Penjabat Bupati & Walikota," tirto.id, 2022.

⁴ Media Indonesia, "Pemuda Maluku Utara Demo Mendagri Soal Pj Bupati Morotai," mediaindonesia.com, 2022.

⁵ Dian Erika Nugraheny and Egidius Patnistik, "Jokowi: Pemerintah Sedang Persiapkan Penjabat Untuk 101 Kepala Daerah Habis Masa Jabatan Tahun Ini," [Kompas.com](https://kompas.com), 2022.

⁶ Article 4 paragraph (1) Peraturan Menteri Dalam Negeri Nomor 4 Tahun 2023 Tentang Penjabat Gubernur, Penjabat Bupati, dan Penjabat Walikota.

⁷ Article 9 paragraph (4) Peraturan Menteri Dalam Negeri Nomor 4 Tahun 2023 Tentang Penjabat Gubernur, Penjabat Bupati, dan Penjabat Walikota.

Administering regional government undoubtedly requires supervision to improve public service and people's welfare.⁸ Acting Regional Heads' supervision is similar to direct superiors' supervision, which the Ministry of Home Affairs generally exercises to evaluate Acting Regional Heads' performance. The evaluation has consequences for extending the term of office of the Acting Regional Head from a one-year term, which can be extended for another year with the same or different person. However, the one-year term of office can be excluded or dismissed during his term of office even though he has not served for one year. This dismissal process is based entirely on the Minister of Home Affairs' Acting Regional Head evaluation assessment.⁹

For example, the Minister of Home Affairs dismissed the Acting Regent and his staff of Kampar, Riau Province, through Decree of the Minister of Home Affairs Number 100.2.1-1179 of 2023 concerning the Dismissal and Appointment of the Acting Regent of Kampar, Riau Province. According to several sources, the dismissal was allegedly due to his non-neutral demeanor.¹⁰ The Minister of Home Affairs, Tito Karnavian, removed the Acting Mayor of Cimahi because he could not suppress inflation. Tito Karnavian also explained that he had given repeated warnings to control inflation in advance, as Cimahi is a chili-producing area. According to Tito, given that Cimahi is a productive area, unfortunately, the Acting Mayor cannot reduce inflation for now.¹¹ Over-supervision of direct higher could lead to minimal public supervision in somewhat monitoring and involvement in the dismissal process of Acting Mayors and other Acting Regional Heads.

DPRD's role in the dismissal process was eliminated as the regional people's representative institution adheres to authority and is expected to fulfill the aspirations and participation of the society. The loss of authority in the dismissal process of Acting Regional Heads is opposed to its function as supervisor of Regional Regulations and Regional Head Regulations implementation, overall regional government administration, and countermeasure of financial report audits by the Supreme Audit Agency. In case the DPRD is deemed to have no supervision authority of the Acting Regional Head because it is distinguished from the Regional Head, the Acting Regional Head is given the same duties, authority, obligations, and restrictions as the Regional Head. Acting Regional Heads are only prohibited from doing ASN mutations; canceling permits that have been issued by previous officials and/or issuing permits that conflict with those issued by previous officials; making policies regarding regional expansion that conflict with previous officials' policies; and making policies that conflict with government administration policies and previous official development programs. However, Acting Regional Head can waive these prohibitions after obtaining written approval from the Minister of Home Affairs.

Based on the aforementioned issues, this paper aims to complement the shortcomings of previous research, which has yet to analyze and explain clearly the linkage between the supervisory functions of the Central Government and DPRD in supervising Acting Regional Heads. In particular, this article elucidates the supervision process for Acting Regional Heads, from the appointment process to the evaluation process involving the Central Government and DPRD. Hence, two

⁸ Wicipto Setiadi and Ali Imran Nasution, "Sanksi Administratif Terhadap Kepala Daerah Yang Tidak Melaksanakan Program Strategis Nasional," *Jurnal Penelitian Hukum De Jure* 20, no. 4 (2020): 473-86, <http://dx.doi.org/10.30641/dejure.2020.V20.473-486>.

⁹ Article 8 and 14 Peraturan Menteri Dalam Negeri Nomor 4 Tahun 2023 Tentang Penjabat Gubernur, Penjabat Bupati, dan Penjabat Walikota.

¹⁰ Tim detikNews - detikSumut, "Terungkap Pj Bupati Kampar Dicapot Mendagri Gegara Tak Netral Jelang Pemilu," *detik.com*, 2023.

¹¹ Martyasari Rizky, "Mendagri Blak-Blakan Copot Pj Wali Kota Cimahi, Alasannya Ini," *CNBC Indonesia*, 2023, <https://www.cnbcindonesia.com/news/20231016134318-4-480919/mendagri-blak-blakan-copot-pj-wali-kota-cimahi-alasannya-ini>.

main issues emerged to analyze for clarity. First, how does DPRD supervision function in the performance of Acting Regional Heads? Second, how is there a correlation between the supervisory function of the government and the DPRD in supervising Acting Regional Heads?

2. Method

This research is normative legal research conducted using statutory and conceptual approaches. It examines secondary data using primary and secondary legal sources.¹² The statutory approach is used to analyze applicable laws and regulations.¹³ In this case, this research uses Law Number 10 of 2016 of the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law; Government Regulation Number 12 of 2017 concerning Development and Supervision of Regional Government Implementation; and Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors. A conceptual approach examines doctrine and legal theories with the issues concerned.¹⁴ It is also discussed using supervision theory and the checks and balances doctrine.

3. Regional Legislative Council Supervision Over the Acting Regional Heads' Performance

Supervising the appointment and evaluating the Acting Regional Heads conducted by different institutions and their methods tends to risk weakening each other role. Commission II of the DPR RI supervises the appointment of Acting Regional Heads, while the Minister of Home Affairs and DPRD supervises the performance of Acting Regional Heads.¹⁵ However, performance supervision, which impacts dismissal, does not involve the DPRD's supervisory function. After Minister of Home Affairs Regulation no. 4/2023 was stipulated, the Provincial and Regency/City DPRD's were authorized to nominate three candidates for Acting Regional Head, which fit the Minister of Home Affairs requirements. The Provincial DPRD and the Minister of Home Affairs are authorized to nominate three candidates for the Acting Governor. Meanwhile, for Acting Regent and Acting Mayor, the nomination can be proposed by Regency/City DPRD, Ministry of Home Affairs, and Governor with three candidates each. The maximum number of candidates for Acting Governor is six, and the Acting Regent/Mayor is nine.

The nominating process of Acting Regional Head by Provincial and Regency/City DPRD can be transcribed as part of exercising supervisory function to elect the best leadership candidates. However, the DPRD's involvement is only at the nomination level. The final decision is entirely in the hands of the Minister of Home Affairs, whether DPRD or the Ministry proposes the candidate. This current appointing mechanism is considered weak because no supervisory procedure involves regional representative institutions. Indeed, it would make the Minister of Home Affairs's authority enormous and uncontrolled, as if the appointment process were centralized.

¹² Peter Mahmud Marzuki, *"Penelitian Hukum Normatif"* (Jakarta: Kencana Prenada Media Group, 2010). h. 23.

¹³ Bahder Johan Nasution, *"Metode Penelitian Ilmu Hukum,"* (Bandung Mandar Maju, Cetakan Kesatu, 2008). h. 3.

¹⁴ Jonaedi Efendi and Johnny Ibrahim, *"Metode Penelitian Hukum: Normatif dan Empiris,"* (Jakarta: Prenada Media, 2018), h.29.

¹⁵ Meri Yarni et al., "Polemik Hukum Penunjukan Penjabat (PJ) Kepala Daerah Berdasarkan Undang Undang Nomor 10 Tahun 2016 Tentang Pemilihan Gubernur, Bupati Dan Walikota," *Wajah Hukum* 7, no. 2 (2023): 483-90, <http://dx.doi.org/10.33087/wjh.v7i2.1333>.

In addition to the appointment, the Minister of Home Affairs also entirely holds the authority to evaluate the performance of Acting Regional Heads. Acting Regional Heads shall provide a quarterly accountable self-report to the Minister of Home Affairs. The report becomes a primary source for the Minister to evaluate and assess the performance of each Acting Regional Head. The results will impact the office's one-year term. The office term can be extended for another year if it receives a good assessment. Otherwise, a poor assessment would exclude or be dismissed during the term of office even though they have not served for one year.

The following supervision concept also leads to the predominating dismissal authority of the Minister of Home Affairs because the Minister needs no consideration from other parties since the evaluation comes from itself. Besides, the unregulated dismissal mechanism in Permendagri No. 4/2023 makes the current Acting Regional Head position prone to being dismissed midway without a transparent process or legal basis. Contrary to the legal certainty concept, as stated by Gustav Radbruch, fulfilling justice, utility, and certainty is necessary to achieve the idea of law.¹⁶ Legal certainty ensures that the regulation already exists so that when an occurrence emerges, the regulation can fulfill the legal certainty that someone might be affected.¹⁷ In this case, the dismissal mechanism remains unregulated in Permendagri No. 4/2023, which leads to a lack of legal certainty and will result in the Minister's excessive authority to assess the performance of Acting Regional Heads. Therefore, a concept is needed to balance the Minister's authority to represent the people's interests and ascertain public participation.

Ensuring people's voice and public participation is a mandate of people's sovereignty, as stated in Article 1, paragraph (2) of the 1945 Constitution of the Republic of Indonesia.¹⁸ Sovereignty manifests in representative institutions composing policies and regulations, then is returned to the people to create order.¹⁹ However, the Constitution also mandates the existence of a DPRD as part of the regional government regime in Article 18, so regulations must comply with the regional government regime, particularly in evaluating Acting Regional Heads, so that they are coherent with the Constitution. Therefore, by having an assessment for Acting Regional Heads conducted by the DPRD's supervisory function, checks and balances can be achieved in regional government.²⁰

The current supervisory function of DPRD is regulated in two different regulations: Law No. 23/2014 and Minister of Home Affairs Regulation No. 4/2023. The relationship between this regulation remains unclear. Article 100 paragraph (1) of Law No. 23/2014 states that the DPRD's supervisory function is exercised upon the implementation of Regional Regulations and Regional Head Regulations, other laws and regulations related to the administration of provincial Regional Government, and countermeasure of financial report audits by the Supreme Audit Agency. The supervisory function of the DPRD is to supervise the implementation of regional regulations formed

¹⁶ Muhammad Muslih, "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)," *Legalitas: Jurnal Hukum* 4, no. 1 (2017): 130–52, <http://dx.doi.org/10.33087/legalitas.v4i1.117>.

¹⁷ Tivonli Kirtan et al., "Analisis Yuridis Pencantuman Klausul Force Majeure Dalam Perjanjian Sewa Menyewa Dan Pengelolaan Hak Milik Atas Satuan Rumah Susun Untuk Meneguhkan Kepastian Hukum (Studi Penelitian Di Kota Batam)," *UNES Law Review* 6, no. 1 (2023): 3526–48, <https://doi.org/10.31933/unesrev.v6i1.1154>.

¹⁸ Sandy Sulistiono and Widyawati Boediningsih, "KONSEP KEDAULATAN RAKYAT DALAM IMPLEMENTASI PRESIDENTIAL THRESHOLD PADA SISTEM PEMILIHAN UMUM SECARA LANGSUNG DI INDONESIA," *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 3 (2023): 333–45, <http://dx.doi.org/10.46930/jurnalrectum.v5i3.3488>.

¹⁹ Adam Muhshi, *Teologi Konstitusi: Hukum Hak Asasi Manusia Atas Kebebasan Beragama* (LKIS Pelangi Aksara, 2015). h. 11

²⁰ H Achmad Fauzi, "Fungsi Pengawasan DPRD Dalam Mewujudkan Pelaksanaan Pemerintahan Daerah Yang Baik," *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat* 11, no. 2 (2016), <http://dx.doi.org/10.56444/hdm.v11i2.352>.

by the regional head and the DPRD, as well as its implementing regulations, such as the regional head regulations. Consequently, the dismissal of the Regional Head would impact the supervisory function. As stated in Article 101 paragraph (1) (e) of Law No. 23/2014, the Provincial DPRD is to propose the appointment and dismissal of the Governor to the President through the Minister of Home Affairs to obtain validation for the proposal.

The mechanism for dismissing Regional Heads is regulated in Article 80 paragraph (1) of Law no. 23/2014, which involved the Supreme Court's decision to dismiss regional heads. However, it would consider the DPRD's opinion priorly, which had to be attended by at least 3/4 of the DPRD members, and the decision was taken with the approval of at least 2/3 of the DPRD members present. Furthermore, once the Supreme Court decision is decided, the DPRD forwards it to the President as a proposal to dismiss the Governor and/or Deputy Governor and Mendagri for dismissing the Regent or Deputy Regent or Mayor and/or Deputy Mayor. Indeed, these mechanisms provide and balance supervised good governance throughout regional government and law enforcement on the Supreme Court. Otherwise, Permendagri no. 4/2023, which mainly regulates the evaluation of the Acting Regional Head's performance and dismissal process, is derailing with the provisions in Law no. 23/2014.

The question that must be resolved is how to correlate Law No. 23/2014 with Minister of Home Affairs Regulation No. 4/2023. Based on Hans Kelsen's theory of the hierarchy of legal norms, it is clear that Laws or Government Regulations instead of Laws have a higher position than ministerial regulations.²¹ Hans Kelsen's hierarchical theory believes statutory regulation has tiers or levels from the highest to the lowest.²² Hans Nawiasky then classified legal norms into four groups according to their levels: (1) *Staatsgrundnorm* (Philosophical Norms); (2) *Staatsfundamentalnorm* (Basic Norms); (3) *Formell Gesetz* (Formal Laws; and (4) *Autonome Verordnung* (Implementing Regulations or Autonomous Regulations).²³ These theoretical provisions were adopted by Indonesia in Article 7 paragraph (1) of Law No. 12/2011 concerning the Formation of Legislative Regulations (hereinafter referred to as Law No. 12/2011). The Law applied a hierarchy of statutory regulations: (1) the 1945 Constitution of the Republic of Indonesia, (2) TAP MPR, (3) Laws, (4) Government Regulations, (5) Presidential Regulations, (6) Provincial Regional Regulations, (7) Regional Regulations.

Ministerial Regulations are recognized and legally binding if ordered by higher regulations or formed based on authority.²⁴ Thus, Permendagri No. 4/2023 as Ministerial Regulation is hierarchical under Law No. 23/2014. According to Hans Kelsen, norms in lower regulations are derived from higher regulations. Therefore, the norms substantiated in Permendagri No. 4/2023 should derived and be in line with the norms in Law No. 23/2014. Permendagri No. 4/2023 specifically regulates Acting Regional Heads, while Law No. 23/2014 refers to Regional Heads. Indeed, there are differences and similarities between Regional Heads (Governor, Regent, and Mayor) and Act-

²¹ Mardian Wibowo, "Menakar Konstitusionalitas Sebuah Kebijakan Hukum Terbuka Dalam Pengujian Undang-Undang," *Jurnal Konstitusi* 12, no. 2 (2015): 196-216, <https://doi.org/10.31078/jk1221>.

²² Wahyu Prianto, "Analisis Hierarki Perundang-Undangan Berdasarkan Teori Norma Hukum Oleh Hans Kelsen Dan Hans Nawiasky," *Jurnal Ilmu Sosial Dan Pendidikan* 2, no. 1 (2024): 8-19, <https://jurnal.unsultra.ac.id/index.php/jisdik/article/view/52>.

²³ Meirina Fajarwati, "Konstitusionalitas Ketetapan Majelis Permusyawaratan Rakyat Dalam Hierarki Peraturan Perundang-Undangan," *Jurnal Hukum & Pembangunan* 48, no. 1 (2018): 70-89, <https://doi.org/http://dx.doi.org/10.21143/.vol48.no1.1596>.

²⁴ Article 8 Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.

ing Regional Heads (Acting Governor, Acting Regent, and Acting Mayor). The differences imply the fulfillment position process, candidate backgrounds, term of office, and vice head, as seen in Table 1.

Table 1. Difference between the Regional Head and Acting Regional Head

Criteria	Regional Head	Acting Regional Head
Filling Procedure	General election	Appoint by higher-up
Candidate backgrounds	Political party/independent	State civil apparatus (ASN)
Term of Office	Five years	One year and extendable to another year
Vice	On the ticket	Have no vice

Source: UU No. 23/2014 and Permendagri No. 4/2023

The similarities lie in the duties, authority, obligations, and prohibitions for Regional Heads, which also apply equally to Acting Regional Heads. Exceptionally, in conducting ASN mutations, canceling permits issued by prior officials and/or issuing permits that conflict with those issued by prior officials, making regional expansion policies that conflict with prior policies, and making policies conflicted with prior officials and its development programs. Nevertheless, the Acting Regional Head can waive all of these prohibitions after obtaining written approval from the Minister. In other words, no fundamental differences exist regarding the duties, authority, obligations, and prohibitions that apply to Regional Heads and Acting Regional Heads.

Permendagri No. 4/2023 substantially contradicts the provisions in Law No. 23/2014. As if the Acting Regional Head in Permendagri No. 4/2023 is different from the concept of Regional Heads regulated in Law no. 23/2014, despite their similarities in duties, functions, and authority. These similarities show clearly that the duties and authority of the Acting Regional Head follow the concept of Regional Head. Aside from the similarities between the two positions, the DPRD should be able to perform its supervisory function based on the Acting Regional Head's performance. Therefore, the DPRD's supervisory function in Law No. 23/2014 is practical and continually (*dauerhaftig*), invalid for one-off (*einmalig*). As well as DPRD's supervisory function of Regional Heads' performance as regulated by Law No. 23/2014 applies *mutatis mutandis* to Permendagri No. 4/2023, which regulates the supervision of Acting Regional Heads' performance. To conclude, the existence of Permendagri No. 4/2023 is gaining more legitimacy, as stated by Maria Farida Indrati, that the enforceability (*getting*) of regulation occurs if the norm is formed by a higher norm or by an institution that has the authority to form it.²⁵

4. Supervisory Function Relations between the Central Government and the Regional Legislative Council

The relationship between the central and regional governments in exercising government affairs is a prominent discussion within a unitary state framework.²⁶ The principal authority remains

²⁵ Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan: Dasar-Dasar Dan Pembentukannya* (Yogyakarta: Kanisius, 1998), h.19.

²⁶ Hariyanto Hariyanto, "Hubungan Kewenangan Antara Pemerintah Pusat Dan Pemerintah Daerah Berdasarkan Negara Kesatuan Republik Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2020, 99-115, <https://doi.org/10.24090/volksgeist.v3i2.4184>.

in the central government as the consequences of the division of authority are devolved. The regions exercise the authority that has been delegated and cannot do what is not given.²⁷ Delegated authority to regional government is legitimized under Article 1 point 8 of Law No. 23/2014, which defines decentralization as the handover of government affairs by the central government to autonomous regions according to the Autonomy Principle.

CF Strong argued that a unitary state is a structure where the highest legislative authority is centralized in a national or central legislative body.²⁸ A unitary state makes the country sovereign and independent.²⁹ A deconcentrated territorial government has no authority legitimized by statute. Deconcentration government authority is defined by delegation or mandate, not based on the transfer of authority by attribution, which is obtained directly by statute from legislators or the constitution's founder.³⁰ Decentralization constructs regional autonomy under the Regional Head and DPRD control according to their level. Article 1 point 2 of Law No. 23/2014 emphasizes that the Regional Government administers government affairs through the Regional Head. DPRD aligns the autonomy principle and assistance duties with the broad autonomy principle within the Republic of Indonesia's Unitary State legal system. The region's autonomy realm requires a control holder to be the Regional Head and DPRD accordingly.³¹ Therefore, the relationship between the Regional Head and the DPRD is critical to administering regional government.

In its development, the Regional Head and DPRD term of office would end unconcurrently. Before 2019, DPRD members were elected simultaneously and ended their term of office in 2024. Meanwhile, the first simultaneous regional elections were held on December 9, 2020, for some provincial and district/cities.³² For other regions that did not participate in the 2020 election, their office term would end in 2022 and 2023. The upcoming 2024 simultaneous elections would select candidates for Indonesian DPR, DPD, Provincial, and Regency/City DPRD members on November 27 and Presidential on February 14. The legislators offered to appoint an Acting Regional Head to fill the Regional Head's 2022 and 2023 vacant positions. As regulated in Article 174 paragraph (7) of Law No. 10/2016, when the remaining term of office is less than eighteen months, the President appoints the Acting Governor, and the Minister of Home Affairs appoints the Acting Regent/Mayor. The primary purpose is to appoint an Acting Regional Head when there is a vacant position of Regional Head toward simultaneous regional elections on November 27, 2024.

The relationship between the central and regional governments is constitutionally recognized; the authority relation between the central government and regional governments of provinces, districts, and cities or between provinces and districts and cities is regulated considering

²⁷ Sofyan Hadi, Tomy M Saragih, and others, "Ontologi Desentralisasi Fiskal Dalam Negara Kesatuan," *Perspektif* 18, no. 3 (2013): 169–79, <https://doi.org/10.30742/perspektif.v18i3.43>.

²⁸ Ernawati Huroiroh, Mochammad Fauzi, and others, "Konsep Negara Federasi Dalam Bingkai Negara Kesatuan Republik Indonesia," *Sosio Yustisia: Jurnal Hukum Dan Perubahan Sosial* 2, no. 1 (2022): 18–41, <https://doi.org/10.15642/sosyus.v2i1.149>.

²⁹ Amiek Soemarmi et al., "Konsep Negara Kepulauan Dalam Upaya Perlindungan Wilayah Pengelolaan Perikanan Indonesia," *Masalah-Masalah Hukum* 48, no. 3 (2019): 241–48, <https://doi.org/10.14710/mmh.48.3.2019.241-248>.

³⁰ Hamidi Hamidi, "Rekonstruksi Pengaturan Kewenangan Pemerintah Kabupaten/Kota Dalam Menjalankan Asas Otonomi Di Indonesia Berbasis Nilai Kesejahteraan", Tesis (Semarang: UNIVERSITAS ISLAM SULTAN AGUNG, 2023). h. 17.

³¹ Dudung Abdullah and others, "Hubungan Pemerintah Pusat Dengan Pemerintah Daerah," *Jurnal Hukum Positum* 1, no. 1 (2016): 83–103, <https://doi.org/10.35706/positum.v1i1.501>.

³² Lampiran Peraturan Komisi Pemilihan Umum Republik Indonesia Nomor 5 Tahun 2020 tentang Perubahan Ketiga atas Peraturan Komisi Pemilihan Umum Republik Indonesia Nomor 15 Tahun 2019 tentang Tahapan, Program, dan Jadwal Penyelenggaraan Pemilihan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, dan/atau Walikota dan Wakil Walikota Tahun 2020.

regional specificities and diversity.³³ It ensures well-regulated authority and distribution between the central government and regions. As mentioned, in a unitary state, the central government is the principal and inherent authority that devolves its authority to the region.³⁴ Central authorities can withdraw their authority in the region whenever they are convinced, as it is the legal basis of a unitary state where the central government is a central administration.

The central government has the power to monitor the performance of Acting Regional Heads, which is a logical consequence of the Ministry of Home Affairs's appointment.³⁵ Article 2 of Permendagri No. 4/2023 states that to fill the vacant Regional Head, the Government appoints an Acting Regional Head to lead the administration of Government in the region until the definitive Governor and/or Deputy Governor, Regent and/or Deputy Regent, Mayor and/or Deputy Mayor are appointed. It appears that the Central Government, by the Minister of Home Affairs' suggestion and the DPRD, proposed an Acting Governor (vide Article 4 paragraph (1) Permendagri No. 4/2023). Furthermore, the Minister can appoint candidates for Acting Regional Heads by observing the requirement regulated in Article 3 of Permendagri No. 4/2023. The requirement follows: (a) have experience in administering Government as proven by an official profile; (b) ASN officials or officials in particular ASN positions who occupy Middle High Leadership within the Central Government or the Regional Government for candidates for Acting Governor and occupying Primary High Leadership Positions within the Central Government or the Regional Government for candidates for Acting Regent and Acting Mayor; (c) a well-scored performance review for the last three years; (d) no criminal or disciplinary records under statutory; and (e) physically and mentally healthy as proven by a certificate from a government hospital.³⁶ Further screening will be conducted on these requirements. In other words, Acting Regional head is a career occupation because a three-year employee assessment is needed.

A logical consequence of such an appointment mechanism leads to the direct supervisory authority of the Minister of Home Affairs as a superior. However, several central government supervisions are carried out over regional governments, such as general guidance and supervision, technical supervision, and the Governor as a central government representative.³⁷ General guidance and supervision are general supervision carried out by the President through the Minister of Home Affairs. Then, the Minister would exercise several aspects under the provisions in Government Regulation Number 12 of 2017 concerning the Development and Supervision of Regional Government Implementation (hereinafter referred to as PP No. 12/2017). General guidance includes the division of government affairs, regional institutions, employee affairs, regional finance, regional development, public services, regional cooperation, regional policies, regional heads and DPRD, and other forms of guidance following the provisions of statutory regulations.³⁸

³³ Article 18A paragraph (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

³⁴ Jefri S Pakaya, "Pemberian Kewenangan Pada Desa Dalam Konteks Otonomi Daerah (The Providing of Authority to Village in the Context of Regional Autonomy)," *J. Legis. Indones* 13, no. 1 (2016): 73–84, <https://doi.org/10.54629/jli.v13i1.143>.

³⁵ Yarni et al., "Polemik Hukum Penunjukan Penjabat (PJ) Kepala Daerah Berdasarkan Undang Undang Nomor 10 Tahun 2016 Tentang Pemilihan Gubernur, Bupati Dan Walikota." *Wajah Hukum* 7(2):483 DOI: [10.33087/wjh.v7i2.1333](https://doi.org/10.33087/wjh.v7i2.1333).

³⁶ Article 3 Peraturan Menteri Dalam Negeri Nomor 4 Tahun 2023 Tentang Penjabat Gubernur, Penjabat Bupati, dan Penjabat Walikota.

³⁷ Moh Hasrul, "Penataan Hubungan Kelembagaan Antara Pemerintah Provinsi Dengan Pemerintah Kabupaten/Kota," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 22, no. 1 (2017): 1–20. DOI: <https://doi.org/10.30742/perspektif.v22i1.601>.

³⁸ Article 3 paragraph (2) Peraturan Pemerintah Nomor 12 Tahun 2017 tentang Pembinaan dan Pengawasan Penyelenggaraan Pemerintahan Daerah.

Technical supervision is executed by technical ministers and heads of non-ministerial government institutions for technical guidance (see Article 3 paragraph (1) (a) (2) PP No. 12 of 2017). The Governor can supervise district/city regional governments in his position as a representative of the central government. To perform guidance and supervision of government affairs in the regency/city and assist tasks authority by regency/city regions, the President is assisted by the Governor as a representative of the Central Government in the region.³⁹ The provision intends to run supervision by the Governor over the district/city in his capacity as a central government representative.⁴⁰ To conclude, supervision over regional government is carried out in three procedures: (1) general supervision by the Minister of Home Affairs; (2) technical supervision by ministries or vertical agencies; and (3) supervision by the Governor as the government representative to the Regent/Mayor.

DPRD's presence as an element of regional government administration is also the object of supervision for the Minister of Home Affairs. Hierarchically, regional heads and DPRD are subordinate to the central government, making them a supervised object by the Minister of Home Affairs.⁴¹ Interestingly, the DPRD also has a supervisory function over Regional Heads in implementing Regional Regulations, Regional Head Regulations, and other laws and regulations related to regional government administration. The relationship between the central government's supervisory function and the DPRD's supervision of the performance of regional heads can be seen here. Despite the difference between the Acting Regional Head and the Regional Head, the DPRD should also be able to supervise the Acting Regional Head as its DPRD's authority to supervise the Regional Head.

Permendagri No. 4/2023 is the primary provision to elucidate the relationship between the central government's supervisory function and the DPRD. Evaluation by the Minister is based on coaching, supervision, and quarterly self-reports submitted by the Acting Regional Heads. In some instances, the Minister directly assigns the Inspectorate General and relevant work units to evaluate based on the mentioned evaluation documents.⁴² This provision gives full authority to the Minister of Home Affairs over Acting Regional Heads without involving the DPRD as the people's representative institution in the region. It should be necessary to perform DPRD's supervisory function because DPRD and the Acting Regional Head are working partners, so it would keep fairness and prioritize public participation and their people representation function. Studying the above policies reveals the fluid nature of conditionality, the inconsistency in its application by the Commission over time, and the weakness of a clear causal relationship between conditionality and outcomes in the policy area.⁴³

Monitoring of Acting Regional Heads by the DPRD would generate checks and balances at the regional level. The following concept manifested horizontal institutional supervision at a re-

³⁹ Article 91 paragraph (1) Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah.

⁴⁰ Esti Nuriani, "Evaluasi Rancangan Peraturan Daerah Oleh Gubernur Sebagai Wakil Pemerintah Pusat Di Daerah," *Tadulako Master Law Journal* 3, no. 2 (2019): 184–201, <https://doi.org/10.22487/tmlj.v3i2.182>.

⁴¹ Rahmat Qadri Nasrun, Husni Djalil, and Efendi Efendi, "Kedudukan Peraturan Daerah Yang Dibatalkan Oleh Keputusan Menteri Dalam Negeri Setelah Putusan Mahkamah Konstitusi Nomor 137/PUU-XIII/2015," *Syiah Kuala Law Journal* 3, no. 1 (2019): 95–113, <https://doi.org/10.24815/sklj.v3i1.12158>.

⁴² Article 19 and 20 Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 4 Tahun 2023 Tentang Penjabat Gubernur, Penjabat Bupati, dan Penjabat Walikota.

⁴³ James Hughes, "Gwendolyn Sasse, and Claire Gordin, Conditionality and Compliance in the EU's Eastward Enlargement: Regional Policy and the Reform of Sub-national Government," *Journal of Common Market Studies (UACES)*, <https://doi.org/10.1111/j.0021-9886.2004.00517.x>.

gional level, albeit it can only be applied to constitutional organ institutions.⁴⁴ Monitoring by DPRD would also assist in balancing the prior evaluation done by the Minister. As a principal authority, the Minister would take over the evaluation results of the DPRD. Nevertheless, the DPRD's role would help make the evaluation more equitable over Acting Regional Heads. The result of the supervision would strengthen the relationship between DPRD and the central government through the Minister. Therefore, performing DPRD supervision over Acting Regional Heads generates checks and balances and provides a more equitable assessment to the Minister of Home Affairs.

A suitable procedure would build good relations between the central government and DPRD. Moreover, it also generates good checks and balances for both. DPRD's monitoring results are additional documents attached to the compulsory quarter self-reports for the Minister of Home Affairs over Acting Regional Heads. Building these good relations demands technical regulation adjustment to ensure the supervision function works. Involving DPRD as people's representative requires additional public participation procedures to evaluate their Acting Regional Heads and to evade arbitrary evaluation by the Minister. As emphasized in the previous discussion, Article 18 Permendagri No. 4/2023 needs to give more authority to the DPRD to perform its supervision function by delivering evaluation reports over Acting Regional Heads to the Minister of Home Affairs.

5. Conclusion

The current supervision over Acting Regional Heads has adopted a direct superior model and is entirely carried out by the Minister of Home Affairs. The rising dichotomy between the Regional Head and the Acting Regional Head's defined position is a principal obstacle to limiting DPRD from performing its supervisory function over Acting Regional Heads. Consequently, DPRD's supervisory is limited to only nominating three candidates for Acting Regional Head to the Minister of Home Affairs. Acting Regional Heads and Regional Heads have the same duties and authorities as stated in Article 15, paragraph (1) of Permendagri No. 4/2023. These two similar positions should reasonably allow DPRD to exercise its supervisory function over Acting Regional Heads. Hence, the DPRD's supervisory function, as regulated in Law no. 23/2014, would be applicable effectively and continually (*dauerhaftig*), but it would be invalid for one-off (*einmalig*).

The supervisory function relations between the central government and the DPRD to oversee Acting Regional Heads is a pivotal foundation of checks and balances. Moreover, as a people's representative institution, DPRD's supervisory function is necessary to prevent the Minister from acting arbitrarily in the Acting Regional Head evaluation. Hence, to achieve a good supervisory function relation between the Central Government and DPRD, Permendagri No. 4/2023 shall enhance the DPRD's authority. Its Speaker authorizes DPRD to deliver evaluation reports over the Acting Regional Heads to the Minister of Home Affairs. The evaluation report is another document attached to the compulsory quarter self-report by the Acting Regional Head to the Minister of Home Affairs.

⁴⁴ Ibnu Sina Chandranegara, "Penuangan Checks and Balances Kedalam Konstitusi," *Jurnal Konstitusi* 13, no. 3 (2016): 552-74, <https://doi.org/10.31078/jk1334>.

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