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Decline of Local Democracy: Legal Vacancies, Non-Ideological Coalitions, and the Phenomenon of Single Candidates in Regional Elections in Indonesia

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Abstract: The consolidation of democracy in post-Reform Indonesia is currently facing an "illiberal turning point" that systematically erodes the essence of people's sovereignty at the local level through manipulative legal engineering. The urgency of this research is based on the institutional paradox due to the synchronization of the 2024 Simultaneous Regional Elections which triggered mass vacancies and the strengthening of elite hegemony. This study aims to analyze the dialectic of power recentralization through the appointment of Acting Regional Heads, the construction of the doctrine of factual tenure based on the Constitutional Court Decision Number 132/PHPU. BUP-XXIII/2025, as well as the challenges of political cartelization to elite circulation and freedom of choice. The main findings of this study show the existence of a "triad of democratic regression" which includes: (1) a crisis of sociological legitimacy due to the appointment of 271 acting regional heads that are centralistic and closed; (2) the establishment of the doctrine of factual tenure as an instrument of substantive justice to prevent the manipulation of tenure by incumbents; and (3) the anomaly of political party cartelization that actually consolidates giant coalitions to create a single candidate even though the nomination threshold has been lowered through the Constitutional Court Decision Number 90/PUU-XXIII/2025. These findings contribute to the understanding that current legal norms tend to be used as instruments of political exclusion to maintain the status quo of the elite. The conclusion of the study confirms that local democracy is undergoing a substantial erosion into just an administrative plebiscite. The implication is that it demands a more strict revision of the Election Law and total transparency in the mechanism for appointing officials. The suggestion for further research is to conduct an empirical evaluation of bureaucratic neutrality under the leadership of the acting and the effectiveness of civil society movements in fighting electoral monopolies.

Keyword: Local Democracy, Acting Regional Heads, Factual Tenure, Political Cartelization, Constitutional Court.

INTRODUCTION

The consolidation of democracy in post-Reformation Indonesia is now facing an "*illiberal turn*" that systematically erodes the essence of people's sovereignty at the local level through various manipulative legal instruments. On a macro level, the political stability sought by the government through the uniformization of national and regional election cycles has given birth to an institutional paradox referred to as the "triad of democratic regression," which includes the proliferation of definitive vacancies, the cartelization of political parties through non-ideological coalitions, and the strengthening of elite hegemony in the phenomenon of a single candidate (Aspinall & Mietzner, 2019). Since the direct elections were held for the first time in 2005, the regional elections have not succeeded in creating democratic processes to produce credible leaders, although this is true only in a few regions. The principle of democracy should provide equal opportunities for all participants in elections and be free of violence. Contestation in the regional elections is seen as only part of the routine carried out by the people. According to the results of the research, the implementation of regional elections has been carried out sporadically and there are still many crucial problems, including regulatory issues, determination of regional election schedules, budget readiness, selection and nomination processes, neutrality of organizers, money politics, conflicts, disputes, riots or other injustices in its implementation. Of the many candidate pairs who participated in the contest, most came from political parties or combinations of parties formed through mutual agreement. The formation of the coalition does not highlight each party's ideology too much. The party coalition formed is very fluid and random. Based on the existing coalition, it is not always possible for religion-based parties to form a coalition with religion-based *patai* as well, even political parties with opposite ideologies suddenly join the same coalition. This is because political parties participating in the election want to get voter votes not only from one group, but aim to get as many votes as possible to achieve victory.

Pragmatism does not occur only in the coalition process; it can also be seen in the candidates' proposed prioritization of electability and popularity. According to Arif Wibowo in the article Christian Dior Simbolon, (Simbolon, 2017) Nowadays, political parties are starting to forget their party's cadres and ideology, this can be seen by the large number of candidate pairs proposed but not the party cadres themselves. The goal of these parties in the contest is to win and gain power. Still according to Arif, there are not many political parties that carry out their functions to carry out regeneration. If political parties have carried out this function, it is not certain that their best cadres who have been tested within the party will be included or nominated in the regional elections, but the party will use pragmatic considerations, utilizing figures that are already known to the public and the electability of the candidates that will be carried out.

Direct election of regional heads embodies local democracy. However, the political dynamics in the 2024 Regional Elections present a different situation as usual. The regional elections will be held on November 27, 2024, and there will be no elections for Regional Heads in 2022 and 2023. In 2022 and 2023, 271 Regional Heads had their terms of office expire. In fact, the Indonesian legal system has not been able to accommodate the vacancy of the term of office (Mahardika et al., 2022). The synchronization of the 2024 Simultaneous Regional Elections directly clashes with the principle of term certainty guaranteed in Article 60 of Law Number

23 of 2014 concerning Regional Government. Normatively, regional heads should have a full five-year term, but the existence of Article 201 paragraph (7) of Law Number 10 of 2016 requires regional heads as a result of the 2020 election to quit in 2024, which factually cuts their constitutional right to complete the people's mandate (Gusman & Nazmi, 2024). A report from the Ministry of Home Affairs has 101 Regional Heads consisting of 7 Governors, 76 Regents, and 18 Mayors will expire in 2022, and must be filled by the Acting Regional Head (Pj KDH). Meanwhile, in 2023, 17 Governors, 38 Mayors, and 115 Regents will have their terms of office expire and must be replaced by Acting KDH. However, in practice, the filling of the Acting KDH position is determined by the President and the Minister of Home Affairs for the Acting Governor, while the Acting Regent/Mayor is appointed by the Governor. This mechanism is very prone to conflicts of interest, transactional politics, and lack of transparency (Farisa, 2022), (Ramanda, 2022).

Legal problems at the regional level arise when. The Constitutional Court, through Decision Number 27/PUU-XXII/2024, tried to mediate this conflict of norms by stating that the elected regional head in 2020 will remain in office until the inauguration of the results of the 2024 Regional Elections as long as it does not exceed five years (MK RI, 2024). However, this policy does not completely remove the "legal vacuum" related to the legitimacy of temporary officials who were appointed massively to fill the transition period in 271 regions (Fikri, 2025). The appointment of Acting Regional Heads under Article 201, paragraph (9), of Law Number 6 of 2020 is often considered to ignore local aspirations because it is dominated by the subjective decisions of the central government, without a transparent public testing mechanism (Dewi & Daim, 2023). This creates a dangerous precedent in Indonesian constitutional law, where the people's right to be led by a hand-picked official is replaced by bureaucrats who are vertically only accountable to the Ministry of Home Affairs, thereby undermining the essence of regional autonomy and public accountability (Prasojo & Salam, 2022) (Sutrisno & Akbar, 2024).

The culmination of this legal problem lies in the uncertainty of interpretation regarding the two-term limit which is a legal weapon to disqualify political opponents. The Constitutional Court, through Decision Number 2/PUU-XXI/2023 and was dramatically affirmed in Decision Number 132/PHPU. BUP-XXIII/2025 (Tasikmalaya Regency Case) has established a new doctrine regarding "factual *tenure*". In Decision 132/2025, the Constitutional Court expressly disqualified the incumbent Ade Sugianto because the calculation of two periods now includes the term of office as an Acting Officer (Plt) or Acting Temporary (Pjs) if he has served half or more of his term of office, which is a minimum of 2.5 years, regardless of his administrative status (*Putusan Nomor 132/PHPU.BUP-XXIII/2025 tentang PHPU Kabupaten Tasikmalaya*, 2025) (Nurjani, 2025). This doctrine aims to prevent *abuse of administrative status* by political actors who use non-definitive status gaps to exceed the constitutional limit of two periods (Al-Fatih et al., 2023). However, at the implementation level, there is a legal disorder because the General Election Commission, through PKPU Number 8 of 2024, had used a different interpretation, which triggered administrative chaos and electoral injustice for candidates in various regions (Nurjani, 2025). The issue of term of office is not just a matter of time duration, but a legal instrument used to determine who can and cannot contest, which in many cases actually smooths the way for the dominance of certain elites (Siregar et al., 2024). In addition, weak political legitimacy can lead to social resistance, the politicization of the bureaucracy, and a decrease in the effectiveness of public services, especially in areas with high levels of political vulnerability. Basically, several studies have studied the Acting Attorney General of

the Attorney General's Office, such as the mechanism of appointment of the Acting Attorney General. Given KDH's conflicts of interest and weak legitimacy (Ramanda, 2022), the appointment of an Acting KDH raises problems, including political interests, the politicization of the State Civil Apparatus (ASN), the politicization of social assistance, and employee mutation. However, these studies generally still focus on legal and administrative aspects. This research aims to fill this gap by mapping public discourse, social perceptions, and bureaucratic dynamics that develop around the appointment of an Acting KDH. This issue becomes even more complicated by the dynamics of the nomination threshold, as set out in Constitutional Court Decision Number 90/PUU-XXIII/2025, which paradoxically facilitates the death of competition even though the administrative requirements have been simplified. Although the Constitutional Court through Decisions 60/2024 and 90/PUU-XXIII/2025 has lowered the nomination threshold to 6.5% to 10% of valid votes to prevent the dominance of major parties, new legal problems have emerged in the form of "voluntary cartelization" through non-ideological coalitions (Riyanto, 2024). Decision 90/PUU-XXIII/2025 does not reject the elimination of the threshold to 0%, but still maintains rules that allow small parties to nominate their own candidates. The problem is that, instead of using this opportunity to create healthy competition, political parties tend to unite in a single giant coalition to "wholesale" support (party wholesale strategy), creating the phenomenon of a single candidate against an empty box (Wicaksono, 2021). The causal relationship is clear: when the threshold rules are lowered but the party's pragmatic behavior does not change, the legal instrument is used by the elite to close the space for alternative candidates by consolidating all party support into a single pair of candidates (Riyanto, 2024). As a result, the people lost their constitutional right to choose diverse leaders, and the Regional Elections changed from an arena of ideological competition to just an administrative plebiscite to approve candidates that had been determined by elite agreement in Jakarta (Johansyah, 2021) (Wicaksono, 2021).

A review of previous research shows that studies on regional elections are still fragmented in their technical analysis of implementation or voter behavior, separately, without examining the relationship between legal instruments. (Romli, 2018) focuses on the manipulation of the elite in single-candidate elections, while highlights the empty box victory in Makassar as an anomaly of mass protests against political domination. The research gap found in the current literature is the lack of a holistic analysis that causally links the massive policy of appointing Acting Officials, the new interpretation of the post-Decision 132/PHPU term of office. BUP-XXIII/2025, and the party's cartelization strategy after the Constitutional Court Decision 90/2025. The novelty of this research lies in the use of the "institutional triad" approach to argue that the decline of local democracy in Indonesia is the result of legal *engineering* that exploits loopholes in administrative regulations to achieve political exclusion. This analysis goes beyond legalistic descriptions by presenting a critical perspective that legal norms about tenure and thresholds have now been transformed into instruments for maintaining the status quo of the elite rather than a means of regenerating democratic leadership. Thus, this study fills a gap in the constitutional law discourse by providing a juridical reconstruction of how to restore the quality of regional competition amid the threat of administrative authoritarianism. Given the complexity of the decline in local democracy, the problems in this study will be formulated as the following research questions. First, examine how the dialectic between the policy of recentralization of power through the appointment of Acting Regional Heads massively has implications for the crisis of sociological and ethical legitimacy at the national level, especially in reviewing the conflict of norms between Article 60 of Law Number

23 of 2014 which guarantees the certainty of a five-year term of office and Article 201 of Law Number 10 of 2016 which cuts these constitutional rights for the sake of election synchronization. The second is how to construct the *Factual Tenure Doctrine* and Political Cartelization: Constitutional Challenges to Elite Circulation and Freedom of Choice

RESULTS AND DISCUSSION

Dialectics of Recentralization and the Crisis of Legitimacy: A Juridical Analysis of the Appointment of Acting Regional Heads in the Transition of Simultaneous Regional Elections

Indonesia's constitutional system is currently facing a severe test due to the policy of synchronization of regional head election schedules regulated through Law Number 10 of 2016. This policy stipulates that national simultaneous voting for the positions of Governor, Regent, and Mayor will be held in November 2024. The juridical implication of this arrangement is the mass wave of end of the term of office of definitive regional heads in 2022 and 2023, which covers 271 regions at all levels (Nur, 2025). This phenomenon creates a very massive regional leadership vacancy and must be filled by the Acting Regional Head through an appointment mechanism by the central government. The dialectic that emerged then was the tension between the administrative need to hold efficient elections and the principles of people's sovereignty and regional autonomy that have been the foundation of democracy since the 1998 Reform era (Power & Warburton, 2020). The central government argues that the appointment of acting officials is a constitutional solution to ensure the sustainability of local government, but constitutional law experts see a trend of recentralization that strengthens administrative authoritarianism (Aspinall & Mietzner, 2019).

Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors gives attribution to the government to appoint Provincial Regional Heads from the positions of Middle High Leaders, Acting Regional Heads of districts/cities from the position of Primary High Leaders, until the inauguration of Governors, Regents, and Mayors as a result of the 2024 simultaneous Regional Elections. Basically, the appointment of acting governors is the authority of the President as mandated by the provisions of Article 174 Paragraph (7) of Law of the Republic of Indonesia Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors into law. The provision reads: "In the event that the remaining term of office is less than 18 (eighteen) months, the President shall appoint the acting Governor and the Minister shall appoint the acting Regent/Mayor". Under these provisions, it is clear that the President has attributive authority to appoint acting governors that cannot be delegated to other parties. It is unprecedented and is new in Indonesia. Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors does not expressly regulate the authority of Acting Regional Heads. There are three regulations that can be the basis, namely Law Number 23 of 2014 concerning Regional Government; Government Regulation Number 49 of 2008 concerning the Election, Endorsement, Appointment, and Dismissal of Regional Heads and Deputy Regional Heads; and Regulation of the Minister of Home Affairs Number 74 of 2016 concerning Leave Outside State Responsibility for Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors. Therefore, it is necessary to make a legal breakthrough in the Government Regulation on the authority and implementation of duties for Acting Regional Heads. The President as the holder of government power according to the 1945 Constitution of the Republic of Indonesia Article 4 paragraph (1) can make discretion and give delegation to the appointed Acting Regional Head. This delegation is necessary and in accordance with Law Number 30 of 2014 concerning Government Administration

Juridical analysis of this phenomenon must begin by identifying a very sharp clash of norms between the laws and regulations governing local government and the law on the

election of regional heads. Article 60 of Law Number 23 of 2014 concerning Regional Government expressly states that the term of office of regional heads is for five years from the date of inauguration (Law Number 23 of 2014). This norm provides legal certainty and protection for the constitutional right of elected regional heads to carry out the people's mandate in full. However, according to Article 201 paragraphs (10) and (11) of Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors, it stipulates as follows; Paragraph (10)

"To fill the vacancy of the position of Governor, an acting Governor is appointed from the position of intermediate high leadership to the inauguration of the Governor in accordance with the provisions of laws and regulations". Paragraph (11) "To fill the vacancy of the position of Regent/Mayor, an acting Regent/Mayor is appointed from the position of primary high leadership to the inauguration of the Regent, and the Mayor in accordance with the provisions of laws and regulations".

As for the process of appointing Acting Regents/Mayors, namely, the DPRD proposes 3 (three) names of candidates for Acting Regents/Mayors to the Minister of Home Affairs who come from Primary High Positions, have experience in the field of government and can maintain the neutrality of Civil Servants (PNS) in the implementation of the Regional Elections by attaching the Certificate of Rank and the last Certificate of Position as well as the biodata of the candidate for Acting Regent/Mayor. However, Article 201 of Law Number 10 of 2016 intervenes in this norm by shortening the term of office of regional heads, as a result of the 2020 election, so that it ends in 2024 (Law Number 10 of 2016). The Constitutional Court in its various legal considerations, emphasized that a five-year term of office is a right inherent in the winner of the election and not in the interim incumbent (Constitutional Court of the Republic of Indonesia, 2024). This clash of norms reflects the inconsistency in national legal politics, where the agenda of election simultaneity is prioritized over the principle of term certainty stipulated in the organic law of local government.

This juridical tension is further exacerbated by the absence of a transparent, accountable mechanism for appointing acting regional heads. The Constitutional Court through Decision Number 15/PUU-XX/2022 and Decision Number 67/PUU-XIX/2021 has actually given an order to the government to immediately issue an implementing regulation that regulates the procedures for the appointment of acting officials (Constitutional Court of the Republic of Indonesia, 2022). The Court emphasized that even though the position is temporary, the filling process must still respect the principles of democracy as mandated by Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia (Asshiddiqie, 2006). However, the government does not issue Government Regulations (PP) as is usually mandated by law, but only uses the Regulation of the Minister of Home Affairs (Permendagri) Number 4 of 2023 (Perludem, 2024). This move is considered by civil society groups as a form of legal defiance of the Constitutional Court's final and binding decision (ICW, 2022). The mechanism for appointing Acting Regional Heads in Article 86 of Law Number 23 of 2014 explicitly stipulates that:

"If the regional head and/or deputy regional head is temporarily dismissed as referred to in Article 83 paragraph (1), the President shall appoint the acting governor on the proposal of the Minister and the Minister shall appoint the acting regent/mayor on the proposal of the governor as the representative of the central government until there is a court decision that has obtained permanent legal force."

However, the provision is specific to the condition of temporary dismissal due to criminal charges carrying a threat of imprisonment for at least 5 years, as referred to in Article 83, paragraph (1), of the a quo Law. Although constitutionally, the authority to appoint Acting Regional Heads is the prerogative of the Central Government, the process of appointing acting regional heads during this transition period cannot use the same mechanism as the appointment

of acting regional heads when the definitive regional head is on campaign leave or temporarily dismissed due to criminal charges. The appointment made by the central government, not based on special rules governing the appointment of acting officials, especially during the upcoming 2024 simultaneous pre-election transition period, has raised various problems, such as limited public involvement or minimal participation and a lack of transparency. This non-transparent process is evident from the lack of an announcement of the list of candidates for the proposed acting regional head. The circulation of the names of candidates before the inauguration did not officially come from the government

As a result of the vacancy of the position of regional head, basically the law in Indonesia has regulated this. However, the laws and regulations do not regulate the consequences of holding simultaneous regional elections. The vacancy of the term of office of regional heads is not an excuse for the government to appoint regional heads without going through a democratic mechanism. This is because it is in accordance with the constitution's mandate, which states that regional heads are elected through a democratic mechanism. Filling positions without a democratic mechanism will undermine the legitimacy of the Regional Head (Mahardika, 2024). In addition, the undemocratic appointment of the Acting KDH ignores the value of transparency and community participation

The legitimacy crisis arises directly from the closed appointment mechanism. Acting regional heads are appointed or unelected officials, but they have very broad authority, including budget management, strategic policies, and employee mutations. The two-year term of office, which is common in some regions, makes the acting head act like a definitive regional head, but without horizontal accountability to the Regional People's Representative Council (DPRD) and local constituents (Ramdani, 2022). The accountability of acting officials is vertical, where they are only accountable to the Minister of Home Affairs or the President who appoints them (Siti Zuhro, 2025). This change in accountability patterns undermines the system of checks and balances at the regional level and creates vulnerability to central political intervention in regional domestic affairs (Hanan, 2025).

The Final Report of the Audit Results (LAHP) of the Ombudsman of the Republic of Indonesia Number 0583/LM/VI/2022/JKT explicitly found maladministration in the process of appointing acting regional heads by the Ministry of Home Affairs (Ombudsman RI, 2022). The Ombudsman identified three main points of administrative failure: non-compliance with legal obligations to establish adequate implementing regulations, non-disclosure in providing public information regarding the profile of prospective officials, and neglect of the substance of the Constitutional Court's decision (Na Endi Jaweng, 2022). This finding strengthens the argument that the simultaneous election transition process has been carried out by ignoring the General Principles of Good Governance (AUPB), especially the principle of openness and the principle of legal certainty (Hadjon, 2002).

The shift of sovereignty from the regions back to the center is at the heart of this phenomenon of recentralization. The theory of people's sovereignty developed by the nation's founders emphasizes collective sovereignty rooted in local communities. The sovereignty of the people in the regions must not be amputated by centralized administrative policies. However, the mass appointment of acting regional heads by the central government reflects a pattern of administrative authoritarianism, in which bureaucratic instruments are used to control local politics in service of the stability of the central elite's power (Slater, 2018). Thomas Power and Eve Warburton call this trend part of democratic backsliding in Indonesia, where democratic institutions are weakened from within through legal procedures that appear to be legal but substantially injure democratic values (Power & Warburton, 2020).

Regional autonomy should grant local governments broad authority to manage their own household affairs (Manan, 1997) Bagir Manan emphasized that regional autonomy is not just the division of administrative territory, but a tangible manifestation of people's sovereignty at

the local level. When the strategic position of regional head is filled through bureaucratic appointments without community involvement, the principle of autonomy becomes a hollow construct (Power & Warburton, 2020). Acting regional heads who come from central bureaucratic elements tend to become central agents in the regions rather than defending the interests of the local people (Zuhro, 2025). This creates a paradox of autonomy: the regions have a formal autonomous status, but functionally they act as an administrative extension of the ministries in Jakarta.

The sociological impact of this legitimacy crisis is the emergence of public resistance in various regions. The rejection of acting regional heads by the DPRD in some regions shows anxiety about the coercion of elites from the center who ignore local aspirations. The legitimacy of a leader in a democratic system does not only come from administrative decrees, but must be supported by the sociological recognition of the society he leads (Asshiddiqie, 2020). Without a people's mandate through elections, acting regional heads often face difficulties in building political consensus with the DPRD to ratify crucial policies.

The analysis of administrative authoritarianism also highlights how the government uses an "authoritarian toolkit" to suppress local-level criticism. The use of administrative authority to limit political participation in the regions is a strong indicator of the decline in the quality of Indonesian democracy (Aspinall & Mietzner, 2019). In international discourse, Marcus Mietzner and Edward Aspinall argue that the consolidation of power in the executive through control of bureaucratic networks in the regions has changed the Indonesian political landscape, making it more illiberal (Aspinall & Mietzner, 2019). The appointment of acting regional heads is one of the instruments in the executive aggrandizement strategy to ensure strict bureaucratic control during the political transition period (Bermeo, 2016).

Efforts to restore legitimacy and halt the recentralization must be pursued through the reconstruction of regulations that uphold people's sovereignty. Philipus M. Hadjon emphasized the importance of legal protection for the people against arbitrary government actions (Hadjon, 2007). The government must prioritize the General Principles of Good Governance (AUPB) in every legal action of state administration. The appointment of acting officials without clear and transparent criteria is a form of abuse of discretion that violates the principle of the rule of law. Therefore, the judiciization of the policy of appointing acting officials through the state administrative court and the Constitutional Court is an important step to keep executive power within the constitutional corridor.

This analysis concludes that the dialectic between recentralization and the crisis of legitimacy in the appointment of acting regional heads is a symptom of the systematic deterioration of democracy. The appointment of an acting officer is not just an administrative matter to fill a vacancy, but a political action that has very deep constitutional implications. The disregard for the principle of democratic elections as stipulated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia and the lack of transparency in the selection process are clear evidence of the shift in sovereignty towards administrative authoritarianism. Indonesia is at a crossroads: whether to continue the path of recentralization that erodes the autonomy and sovereignty of the people, or whether to make a complete correction to the mechanism of simultaneous regional elections to restore the dignity of local democracy (Pepinsky, 2024). The restoration of people's sovereignty requires the courage of the law to uphold administrative transparency and respect the right to regional autonomy as a tangible manifestation of true people's sovereignty.

The policy of appointing acting regional heads is also closely related to the neutrality of the bureaucratic apparatus in political contestation. There are indications that the appointment of acting officials is used as a means to politicize the bureaucracy to secure the electoral interests of certain groups (Noer, 2024). Officials who do not have political legitimacy from the local people become very vulnerable to pressure from the central authorities who appoint them

(Noer, 2024). This condition further exacerbates the crisis of public trust in the integrity of government administration at the local level.

The erosion of people's sovereignty in the regions is also reflected in changes in the pattern of political communication between the central and regional governments. Since the beginning of the period of massive appointment of acting officials, the consultative pattern that usually exists between the definitive regional head and his people has now changed to an instructive pattern from the central ministry to the regional acting (Manan, 1997). Acting regional heads tend to prioritize completing central administrative targets rather than responding to local communities' aspirations (Zuhro, 2025). This causes regional autonomy to lose its participatory spirit and become merely an empty administrative shell of democracy.

In reviewing state administrative laws, the discretion given to the central government to appoint acting officials should be exercised in the public interest, not for partisan political purposes. Philipus M. Hadjon emphasized that any use of discretion or *freies ermesen* by the state administration must be based on the principle of justice (Hadjon, 2007). Acting regional heads who carry out their duties during the 2022-2024 transition period actually bear a burden of responsibility that is disproportionate to the basis of their legitimacy (Rawung et al., 2024). The re-enforcement of the principles of people's sovereignty in accordance with the mandate of the constitution Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia is the only way to restore the dignity of regional autonomy. This dialectic shows that Indonesia needs a new synthesis in a more balanced central-regional relationship. A unitary state does not mean uniformity and castration of autonomy, but rather a harmony in which the central and regional regions work together within a democratic framework that respects local rights. The appointment of acting regional heads behind closed doors is a wound to Indonesian democracy that must be immediately healed through comprehensive legal reform and a return to a commitment to true people's sovereignty. Only in this way, the simultaneous regional elections transition can be passed without having to sacrifice the noble values of democracy that have been the breath of the struggle of the Indonesian nation since the Reform era

Construction of the *Factual Tenure Doctrine* and Political Cartelization: Constitutional Challenges to Elite Circulation and Freedom of Choice

The existence of local democracy in Indonesia is currently at an alarming nadir due to the penetration of elite interests that use legal instruments to maintain the status quo of power. This phenomenon of democratic decline does not occur through a drastic military coup, but through a gradual and systematic process of institutional weakening which is often referred to as administrative authoritarianism .

The basic principle of a democratic state always demands and requires the dispersion of power, so that power is not concentrated in one hand. Centralized power on the one hand is contrary to democratic principles because it opens up opportunities for arbitrariness and corruption. A well-known public argument for this is Lord Acton's statement that "power tends to corrupt and absolute power corrupts absolutely". (Venter, 2015) According to Franz Magnis Susen, "A democracy that is not a state of law is not a democracy in the true sense. Democracy is the safest way to maintain control over the rule of law." (Mande, 2016) Thus, a state of law that is supported by a democratic system can be called a democratic state of law (*demokratische rechtsstaat*) In the history of the practice of government implementation, the application of the concept of democracy is very vulnerable to abuse, so it requires a legal arrangement so that the application of democracy does not become biased. This is characterized by the existence of weaknesses or inherent defects of the concept of democracy itself, where at the level of implementation of the concept of democracy is understood or relies on the majority vote which

actually does not necessarily reflect the side of truth and justice, so that decision-making within the scope of state power requires a balancing mechanism by applying the principle of nomocracy (justice) One of the main pillars that becomes the field The juridical battle in this discourse is the term limit of regional heads and the nomination mechanism which is increasingly co-opted by the interests of political cartels. The Constitutional Court, as the constitutional guardian institution, has sought to effect change through new jurisprudence, but challenges at the implementation level and the behavior of political actors remain major obstacles to the healthy circulation of the elite.

The construction of the doctrine of factual tenure was confirmed through the Constitutional Court Decision Number 132/PHPU. BUP-XXIII/2025 is a fundamental juridical response to the practice of manipulating administrative status that is often carried out by incumbents. This doctrine affirms that the calculation of two-term terms must be based on the reality of power's actual exercise, not simply on the symbols of formal inauguration. In the case of a dispute over the results of the election of the Regent of Tasikmalaya, the Court expressly disqualified the incumbent Ade Sugianto because the person concerned had carried out executive functions as an Acting Officer (Plt) for a significant duration. Theoretically, term limits are a manifestation of the principle of limited government which aims to prevent the accumulation of power on one hand which can lead to tyranny (Asshiddiqie, 2005). Jimly Asshiddiqie emphasized that periodic term limits are a crucial mechanism for ensuring leadership regeneration and preventing political decay.

The application of the doctrine of factual tenure has consistently become an analytical knife to dissect how incumbents often take advantage of regulatory loopholes in Law Number 10 of 2016. Article 7 paragraph (2) letter n in the previous law was often interpreted restrictively by election organizers, where only the definitive term of office was counted as one period. This narrow administrative interpretation provides an opportunity for political elites to serve beyond constitutional boundaries by dividing their term of office between acting and definitive status. However, in Decision Number 132/2025, the Constitutional Court adopted a substantive-contextual approach that prioritizes electoral integrity. The Court sets the parameters that if a person has served as a regional head or temporary acting for half of his term or at least 2.5 years, then the person concerned is considered to have served a full term.

This paradigm shift from formalistic to substantive justice has a direct impact on the circulation of elites within regions. The juridical argument underlying the doctrine of factual tenure is closely related to the general principles of good governance (AUPB) (Hadjon, 2001). Philipus M. Hadjon stated that every government action must be based on the principles of legal certainty and prudence (Hadjon, 2001). When an official exercises full authority as an Acting Officer, he or she has made decisions with wide impact on the community, manages the budget, and leads the bureaucracy, so that, functionally, there is no difference between himself or herself and the definitive official. Therefore, the exclusion of the term of office of the Acting Acting from the two-term count is a form of legal injustice that hurts the spirit of Article 18 paragraph (4) of the 1945 Constitution concerning the democratic election of regional heads. The elite circulation that should be open under the doctrine of factual tenure is actually facing a major obstacle in the form of political cartelization. Political cartelization in Indonesia manifests as political parties no longer functioning as agents of ideological competition but as "cartels" that collude to control state resources.

Max Weber grouped there are three main sources of legitimacy, namely:

a. Traditional authority

Legitimate government authority is grounded in the sanctity of ancient traditions and the legitimacy of those who exercise authority in accordance with them. The community behaves and acts to legitimize it based on the traditional values that exist and apply in the society. (Mulianto & Fikri, 2018)

b. Legal–rational authority

The government authority that the community accepts is in trust in the legality of the rules to issue orders. The authority of a person who obtains and exercises authority is based on the foundations, namely laws, regulations, or other rules that apply in a society.

c. Charismatic authority

Charismatic authority is contained in a leader with a vision and mission who can inspire and arouse others through his activities, enabling them to faithfully follow him. The argument is based on the characteristics that a leader has and can be felt by others.

Richard Katz and Peter Mair explain that parties tend to unite to limit competition and ensure the collective victory of the elite (Katz & Mair, 2009). Politics is the art of influencing all circles to be influenced by the ideas they want to achieve. The leader of a country or region is a political leader, so the mandatory knowledge required is political science. How to communicate with the upper and lower circles to share ideas/ideas that want to be achieved for the common good. So the legitimacy of charismatic authority is very influential to become a political leader. At the regional level, this is manifested in the strategy of "party buying" after the Constitutional Court Decision Number 90/PUU-XXIII/2025. Although the Constitutional Court, through Decision 60/2024, lowered the threshold for regional head candidacy to 6.5% to 10% of valid votes to encourage the emergence of more candidates, the reality is that this shows an anomaly.

Political parties responded to this lowering of the threshold in a paradoxical way, consolidating giant coalitions to support just one pair of candidates. This strategy deliberately creates the phenomenon of a single candidate against an empty box, effectively killing space for alternative figures or individual candidates to contest. This voluntary cartelization shows that the political elite is more concerned with the division of power and the distribution of rents than with offering competitive leadership options to the people (Mudhoffir, 2025). The legal impact of this practice is the degradation of local democracy, in which elections become mere administrative plebiscites to approve candidates predetermined by elite agreement at the central level.

Research on cartelization in Indonesia states that this phenomenon has penetrated into the policy-making process or policy cartelization. The political elite used the power of the grand coalition to weaken the accountability and oversight mechanisms in the local parliaments. When there is no strong opposition in the DPRD because all parties have joined the winning coalition, then control over the executive becomes paralyzed. This condition is very vulnerable to triggering institutionalized practices of corruption, collusion, and nepotism. Bagir Manan reminded that the system of checks and balances is an absolute prerequisite for a democratic state of law (Manan, 2003). Without competition and supervision, regional power will return to a pattern of patronage that is detrimental to the public interest.

This constitutional challenge is exacerbated by the policy of massively appointing Acting Regional Heads to fill the transition period of simultaneous regional elections. The vertical appointment of bureaucrats by the central government, without a transparent, participatory mechanism, is a form of recentralization that erodes regional autonomy. An incumbent who does not have a direct mandate from the local people tends to be more accountable to the

authorities who appointed him than to the local constituents. This creates a deep crisis of sociological legitimacy, where the public feels that their sovereignty in choosing regional leaders has been neglected in favor of administrative efficiency in holding simultaneous elections. This legitimacy crisis often triggers public resistance and undermines the stability of public services in the region.

The legal implications of the accumulation of factual tenure issues, political cartelization, and the appointment of acting officials are very serious for the future of Indonesian governance. First, there is a decline in public trust in the integrity of the democratic process. The people feel that their vote no longer determines who will lead, because their choices are already limited by the party elite. Second, elite circulation has stagnated because the entry of new candidates is blocked by the dominance of large coalitions that prefer to carry established figures or those with strong financial capital. Third, there is legal uncertainty arising from inconsistencies between the Constitutional Court's decision and the technical regulations issued by the organizing institution.

Ramlan Surbakti argues that general elections have three basic objectives: selecting leaders, serving as a means of public policy, and realizing people's sovereignty (Surbakti, 1992). However, the phenomenon of a single candidate born from cartelization kills all three goals. Voters faced with one choice are forced to make political "forced purchases," in violation of internationally guaranteed principles of freedom of choice. Juridically, the existence of an empty box is indeed recognized, but the absence of a balanced opponent is a form of neglect of the people's right to obtain alternative leadership (Surbakti, 1992).

To overcome these problems, concrete and systematic juridical recommendations are needed. The revision of the Election Law is an urgent need to absorb the doctrine of factual tenure into a strict norm and not multi-interpretation. Regulations regarding the formation of political party coalitions also need to be tightened, for example by providing a maximum limit on the percentage of party support for one pair of candidates to prevent monopoly and encourage the birth of at least two pairs of candidates in each election. In addition, institutional strengthening of election organizers must be carried out so that they have the independence and courage to enforce the Constitutional Court's decision which is *erga omnes* even in the face of elite political pressure.

The Constitutional Court must remain consistent in pursuing substantive justice to limit the power lust of the elite who try to circumvent the constitution through legal procedures. The doctrine of factual tenure is not just about counting years, but about maintaining the integrity of public office from abuse of authority. At the sociological level, people's legal awareness and constitutional literacy must be improved so that citizens can exercise social control over political cartelization in their respective regions. Strengthening civil society and mass media as pillars of democracy is also crucial to dismantle collective practices that are detrimental to people's sovereignty.

The dialectic between the policy of recentralization through the appointment of officials, the enforcement of the doctrine of factual tenure, and the phenomenon of political cartelization reflects the struggle between true democratic values and elite pragmatism. Indonesia is at a crossroads where legal certainty must be balanced with justice that lives in society. Without comprehensive legal reform of the party system and electoral mechanisms at the regional level, elite circulation will remain a luxury reserved for a few groups, while the freedom to vote for the people will become nothing more than empty jargon at every democratic party event. The restoration of people's sovereignty requires courage to overhaul the centralized power structure

and return to the spirit of democratic regional autonomy in accordance with the mandate of the constitution.

The holding of the 2024 simultaneous regional elections has provided valuable lessons on how legal instruments can be used as double-edged swords. On the one hand, the law is used to limit the incumbent's term of office through the doctrine of factual tenure, but on the other hand, the law is manipulated through a cartelization strategy to limit the people's choice. Future legal reconstruction should focus on the creation of a fair and inclusive arena of competition, where every competent citizen has an equal opportunity to be elected, and every voter has complete freedom to determine his or her leader without coercion from the hegemony of the political cartel elite. The quality of local democracy in Indonesia can only be restored if the dignity of the constitution as the highest law is upheld for the welfare of all people (Asshiddiqie, 2005).

The Constitutional Court's interpretation of the term limit in Decision 132/2025 is an attempt to reconnect the common thread between the constitution and political practices that have been deviant. Without the doctrine of factual tenure, term limits are just rules on paper that are easily outsmarted through administrative status. The same goes for the problem of cartelization; Without regulations limiting the monopoly of party support, the spirit of lowering the candidacy threshold will always meet at a dead end in the hands of pragmatic political elites. The synergy between court decisions, government regulations, and public supervision is the main key in keeping the circulation of the elite flowing clearly in Indonesia's democratic pool.

The decline of local democracy is not inevitable; it is a condition that can be remedied through the courage to carry out substantive legal reforms. The main focus must be directed to strengthening the sovereignty of the people as the highest power holder in the region (Manan, 2003). Any attempt to obstruct the people's right to elect their leaders through term manipulation or party cartelization is a violation of the basic principles of democratic rule of law. The reconstruction of the doctrine of factual tenure and the dismantling of political cartels is a constitutional struggle to save the nation's future from the clutches of a new style of authoritarianism in the guise of the law.

CONCLUSION

Based on a comprehensive analysis of the political dynamics of law and law in Indonesia, it can be concluded that local democracy is currently facing systemic threats stemming from legal engineering and elite pragmatism. The main findings of this study confirm the existence of a triad of democratic declines, namely the legitimacy crisis due to the massive appointment of acting regional heads, the emergence of the doctrine of factual tenure as an instrument of correction against the manipulation of tenure, and the phenomenon of political party cartelization that deliberately limits the space for competition through a single candidate strategy. These findings are in line with the initial hypothesis that the synchronization of simultaneous regional elections has been used as an administrative loophole to strengthen the dominance of the central elite and erode regional autonomy. Theoretically, this research contributes to the study of constitutional law by strengthening the argument that substantive justice must be prioritized over formalistic certainty to maintain the integrity of public office. In practical terms, these findings show the need for full transparency in the mechanism for appointing incumbents, as well as for tightening the rules governing party coalitions to guarantee the people's right to choose diverse leaders.

Although this study has mapped the problem holistically, there are limitations regarding the availability of empirical data on the long-term sociological impact of incumbent performance in 271 geographically and politically distinct regions. These limitations need to be taken into consideration when interpreting the findings, especially regarding public service stability, which may vary across regions. As a suggestion for further research, it is crucial to conduct an in-depth study of the correlation between bureaucratic politicization under the acting president's leadership and the neutrality of election organizers in the 2024 Regional Elections. In addition, further exploration is needed on the effectiveness of civil society movements in countering the dominance of a single candidate through the empty box mechanism in various regions. Future research should also focus on developing a model of political party regulation that can trigger ideological regeneration rather than merely pragmatic alliances, so that elite circulation can flow again in a healthy, democratic manner for Indonesia's future.

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