

Violation Principles of Democracy and People's Sovereignty Regarding Bureaucracy in Central Sulawesi

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Abstract

This research exists to connect violations committed by the bureaucracy in Indonesian territory with the principles of social order in Indonesia, namely the Principle of Democracy and the Principle of People's Sovereignty which is based on Article 1 paragraph (2) of the 1945 Constitution by the MPR which explains that Indonesia's sovereignty is in the hands of the people. and carried out in accordance with the Constitution. This research is based on normative juridical methods, namely research conducted based on legal regulations and other supporting materials which are still related to the issue of violations committed by government bureaucrats against the Principles of Democracy and the Principle of People's Sovereignty. This research has descriptive characteristics, namely research that describes events related to this research topic. From this research it is clearly concluded that the appointment of regional head officials without the people is against the principle of popular sovereignty and democratic principles. In this case, the participation and responsibility of all Indonesian citizens needs to create a democratic system that is fair, transparent and beneficial for all people in Indonesia.

Keywords: Bureaucracy, Constitutional Law, Democracy, People's Sovereignty

INTRODUCTION

The development of Constitutional Law in Indonesia is based on several important principles for its implementation. The principles of constitutional law which are principles that are considered basic or fundamental in the Indonesian state administration include (1) the Pancasila Principle; (2) Principles of the Rule of Law; (3) Principle of People's Sovereignty; (4) Principles of Unitary State and Democracy; and (5) Principle of Separation of Powers in Checks and Balances. Violations of the principles underlying constitutional law are the basis for several protests by society today against the existing government. The principles of constitutional law referred to in this study are the Principle of Democracy and the Principle of Popular Sovereignty and their application to the concept of government carried out by the bureaucracy at this time.

The principle of democracy comes from the words "demos" and "kratos" demos means the people and kratos which means power. When interpreted from these two words, the highest power is in the hands of the people. Then this democracy is a symbol of the development of civilization in the modern era. With the globalization of democracy, there is an unwritten obligation for various countries at this time to make the label democracy an element of political development in their country today¹. Meanwhile, sovereignty for Indonesian society is a state concept related to the idea that supreme power is in the hands of the people. The concept of supreme power is meant by the decision-making process, for example the example related to this issue is the inauguration of regional head officials through elections. Based on the views of experts, one of whom is Jack H Nagel, regarding sovereignty, which is the concept of supreme power in a country. As explained by him, there are two basic things related to sovereignty, namely regarding the reach and scope of power.²

It has become clear that the democracy that is developing in Indonesia is a refinement of JJ Rosseau's concept of democracy in which to organize a government it is necessary to have organizers and elect potential leaders of the people. The election of government administrators in the cultural democracy of the Indonesian nation is usually through the ELECTION system. Elections are considered to be a measure of democracy in Indonesia in order to realize people's sovereignty in the country's government system. One of the reasons for using the electoral system in Indonesia is because elections involve the people as a whole and directly. Then, with elections, people can participate in determining the leaders of their country to change the fate of society according to their wishes and needs. The integrity of the election implementation process will be successfully achieved if all stages of the election are held in accordance with applicable laws and regulations, such as the Election Law and KPU Regulations, all of which contain legal certainty. All provisions, both the Election Law and derivatives in KPU Regulations must not deviate from the principle of Luber Jurdil. However, there are frauds that cause the implementation of the principle of popular sovereignty to be lost.

In practice, popular sovereignty and democracy are often combined to create an inclusive and participatory government system. A good democratic government must prioritize the interests and desires of the people, reflected in public policies and that every Indonesian citizen (WNI) has the same opportunity when living the life of the country to participate and take part in the decision-making process.

The application of the principles of popular sovereignty and democracy is one of the crucial things in determining government officials and implementing government regulations

in Indonesia. State officials who are directly elected by the people or elected through their superiors who are also representatives of the people are considered to be able to understand the essence of the principles of popular sovereignty and the principles of democracy. Not only do they understand, but they are also expected to always apply these principles when they carry out their duties and obligations in government.

In this article we will relate violations committed by bureaucratic officials in a region in Indonesia with the principles of Indonesian constitutional law, namely the principle of democracy and the principle of popular sovereignty which is in accordance with its legal basis, namely the amendment to Article 1 paragraph (2) of the 1945 Constitution by the MPR regarding Indonesian sovereignty. which is in the hands of the people and implemented in accordance with the Constitution³.

Violations of principles committed by several officials in Indonesia today are something that is often found in every position they hold. Violations encountered at this time can be seen from the implementation of duties by low-level to high-level officials, it is often found that they consciously carry out actions that violate the principles of Indonesian constitutional law. The changes to article 1 paragraph (2) of the 1945 Constitution, before and after the amendments, certainly have a clear purpose in mind by state experts in Indonesia which is certainly related to the implementation of government by the current bureaucracy. Problems in government bureaucracy at this time will also become issues regarding the application of existing constitutional principles in Indonesia.

RESEARCH METHODS

Form of Research

Based on the object of study in this case study, the legal research carried out is through Normative Juridical Research. This form of research means that the research is carried out through research on library materials or what is usually referred to as existing secondary data. This study was also carried out by examining legal regulations and other supporting materials which are still related to violations committed by the government bureaucracy against the principles of constitutional law, namely the principles of democracy and popular sovereignty.

Data Type

The data examined in the study is secondary data. Secondary data is data based on literature searches or based on existing official documents, such as law books, legal regulations and other supporting materials which are still related to violations committed by the government bureaucracy against the principles of constitutional law, namely the principles of democracy and popular sovereignty. In summary, this research has a study object which is a document or library material.

Research Type

This research is based on descriptive characteristics, namely research that has a plan or aim to describe events that are related to the topic of this research. Research based on the descriptive nature in question begins by describing the title and then explaining the problem originating from the title, of course based on its relation to the principles of popular sovereignty and democracy in Indonesia.

Types of research

The author in this paper analyzes legal materials and draws conclusions from research results requiring an analytical method process. The analysis method using Content analysis is a research technique with final results that can be replicated by paying attention to the content. This means that before obtaining final results or conclusions from primary and secondary legal

materials, analysis of these data is required. It is hoped that the results of this article will increase understanding of the relationship between people's political participation and democratic stability in Indonesia as well as the factors that can moderate this relationship. This can provide input for the government and society in increasing political participation and maintaining democratic stability in Indonesia.

RESULT AND DISCUSSION

Principles of People's Sovereignty and Democracy

The principles of popular sovereignty and democracy are important principles in a democratic government system. The principle of popular sovereignty means that the highest power in the state is in the hands of the people, while democracy means a system of government where the power and rights in making political decisions are held by the people. Overall, the principles of popular sovereignty and democracy lead to the recognition that the people are the main source of power in the state and have the right to make political decisions that affect their lives.

The principles of popular sovereignty and democracy in constitutional law in Indonesia involve several principles, including:

1. General elections
The people have the right to elect their representatives in the democratic process. These elections need to be held freely and fairly, with equal opportunities for all candidates and the right to vote without any pressure.
2. Human rights
The principles of popular sovereignty and democracy require the protection of human rights, such as freedom of speech, assembly and unity, and the right to obtain information. All people have the same right to participate in the political process.
3. Separation of powers
This principle ensures that no party has any power excessive. Power in the state must be distributed between three main institutions, namely the executive, legislative and judiciary. Each institution has different duties and responsibilities and acts as a guardian for each other to ensure that no one party controls the entire government system.
4. Government based on law
A democratic government system must operate within the framework of the law. This means that no person or group is exempt from the law, and all people must be subject to the same rules.
5. Accountability
This principle ensures that elected representatives of the people and government are accountable to the people and must be accountable for their actions in governing and making decisions.

Overall, the principles of popular sovereignty and democracy are important principles in a democratic government system. He ensures that the highest power in the state lies with the people, with various mechanisms to ensure that political decisions taken meet the needs and desires of the people as a whole.

Case of Government Disobedience in the Appointment of the Regional Head as Regent of West Seram

As explained previously, popular sovereignty and democracy are not concepts that immediately appear in the Indonesian government. This is because popular sovereignty and democracy are two concepts that are closely related and are often discussed together. Popular sovereignty refers to the power and authority possessed by the people in making political and social decisions, while democracy refers to a political system based on the principles of popular

participation, equal rights and freedom of opinion. Discussions about popular sovereignty and democracy can cover various topics and issues, one of these issues is the issue of the abuse of law and democracy in the appointment of the head of the State Intelligence Agency (BIN) for the Central Sulawesi region as the acting Regent of West Seram.

Recently there were rumors about the appointment of the head of the Central Sulawesi regional BIN by the Minister of Home Affairs as Regent of West Seram, Maluku. The accusation involved the names of Andi Chandra Asasuddin as the forerunner for regional head and Tito Karnavian as the representative of the Minister of Home Affairs who chose Andi Chandra. If we examine it, this issue actually deviates greatly from the rules for democratically selecting heads or government leaders. This issue has attracted a lot of criticism in society, they consider that the appointment of acting regional heads is a form of government disobedience. This is because basically democracy has rules for the process of determining government leaders, including holding general elections using a democratic system which is systematically chosen by the people. The people must choose because basically the highest power in a democratic country belongs to the people and not through appointment.

Conditions for Regional Head Election

The election of regional heads has standard conditions which are stated in it Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors. The following are the standard conditions for regional head elections:

- A. Indonesian citizen
The regional head must be an Indonesian citizen, which means he must have a valid KTP.
- B. Minimum age 30 years
Prospective regional leaders must be at least 30 years old when appointed.
- C. Minimum high school education or equivalent
Regional head candidates must have at least a high school education or equivalent.
- D. Never been sentenced to prison based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 years or more.
Prospective regional leaders have never been sentenced to prison based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 years or more.
- E. Never been dishonorably dismissed from his position as a civil servant, TNI soldier, member of the National Police, or as a private employee.
- F. Do not serve as an administrator or member of a political party.
Regional head candidates may not have served as administrators or members of political parties for at least the last 3 years before being appointed as candidates.
- G. Physically and mentally capable
Candidates for regional heads are physically and mentally able to carry out their duties and functions as regional heads.
- H. Domiciled in the area concerned
Candidates for regional head must have been domiciled in the region concerned for at least 5 years before their nomination.
- I. Achieve minimum support from political parties participating in the election or from individuals.
Regional head candidates must obtain the support of a minimum of 20% of DPRD seats from political parties participating in the election or a minimum of 10% support from the number of registered voters for individuals.
- J. Pay a deposit or compensation
Regional head candidates must pay a deposit or compensation amount of money determined by the General Election Commission (KPU) for the nomination requirements

Types of Regulations Violated in the Process of Appointing Regional Heads

Apart from the several conditions described above, regional heads also have several criteria which are based on law. Pilkada Number 10 of 2016 regulates the criteria for regional leader candidates where regional leader candidates only from high leadership positions (JPT) Pratama⁴ can become acting regents/mayors. Therefore, Brigadier General Andi Chandra, who holds the position of Kabinda and is not a JPT Pratama, is said to have violated the provisions which applies as required by the Regional Election Law. The next condition is that TNI members are only allowed to hold civilian positions after their term of office has expired (retired) or resigned from active service. Obviously this was contrary to regional election regulations because Brigadier General Andi Chandra himself was still registered as an active TNI soldier at that time. These criteria aim to ensure that regional head candidates have adequate qualifications and meet the legal requirements to be elected as regional leaders. All regional head candidates must meet these criteria to be able to be elected as regional head in the simultaneous regional head elections.

The appointment of Central Sulawesi Regional BIN (Kabinda) Chair Brigadier General TNI Andi Chandra Asaduddin as Acting (Pj) Regent of West Seram, Maluku, after the end of Regent Timotius Akerina's active period did not go through a democratic mechanism. Regional heads should be elected in a democratic way if it is adjusted to the provisions in Article 18 paragraph (4) of the 1945 Constitution. Andi Chandra's appointment itself is considered undemocratic because it is not a regional election process by the people, but rather through appointment by the Minister of Home Affairs. In Law no. 32 of 2004 concerning Regional Government, it has also been explained that the election of regional leaders and deputy regional leaders must both be elected directly by the people who are nominated by political parties or coalitions of political parties.

Apart from opposing regulations regarding democracy, the appointment of Brigadier General Andi Chandra certainly also violates Law 34 of 2004 concerning the Indonesian National Army. Because in Article 47 paragraph (1) the statutory regulations state that soldiers can only hold civilian positions after retiring or resigning from active military service⁵. Brigadier General Andi Chandra had clearly violated this provision because at that time he was still an active soldier. More detailed information relating to positions that TNI soldiers can occupy while still active is also explained in the next paragraph, specifically in Article 47 paragraph (2). This paragraph states that soldiers with active status can only get seats or positions in offices or institutions that are coordinators in the fields of politics, national security and defense, intelligence and state codes⁶, military secretary to the president, resilience agencies and the national defense council, Search and Rescue (SAR) and national narcotics, as well as MA. If Brigadier General Andi Chandra is appointed as regional head in West Seram, Maluku, of course this will be against the provisions because the position of regional head is a position that is outside the scope stated in Article 47. It should be emphasized that what is meant by "can occupy a position in office in charge of coordinating political affairs" does not mean that active TNI can become regional heads. This is because there is Article 39 which clearly prohibits soldiers from taking part in political activities such as political party membership, practical politics, business, as well as activities that allow them to be elected in elections to become members of the legislature and other political positions⁷.

Apart from the election process which was considered undemocratic, the inauguration of Andi Chandra Asaduddin on May 24 2022 as the official Regent of West Seram was not closes the possibility of the emergence of the phenomenon of dual positions. Multiple positions in state administration allow for a monopoly on the use of power in carrying out duties and authority. The existence of an element of interest can also interfere with performance and professionalism in carrying out their authority. As mentioned above, Brigadier General Andi Chandra previously served as Head of the Central Sulawesi Regional BIN (Kabinda) with the

rank of Brigadier General TNI. With this dual position, it is feared that ABRI's dual function potential will return to existence as in the New Order era. The prohibition on holding multiple positions by state officials is stated in Article 76 paragraph (1) letter h of Law no. 23 of 2014. In this article, it is stated that there is a prohibition on regional leaders and deputy regional leaders from holding concurrent positions as other state officials as explained in statutory regulations⁸. For regional heads who are assigned to a position that has been determined by the President, this position may not be held concurrently with another position and if this is done then the person concerned will be dismissed from their position if they are proven to have violated the prohibition on holding concurrent positions by regional heads based on the applicable regulations.

In the end, the appointment of Andi Chandra, which was considered controversial, attracted the attention of the public with several violations that accompanied it. Some of these violations include:

1. Article 30 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (NRI). Strictly regulates that the main task of the TNI is to uphold state sovereignty, safeguard the territorial integrity of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia.
2. MPR Decree Number: X/MPR/1998 concerning the Principles of Development Reform in the Context of Saving and Normalizing National Life as State Policy.
3. MPR Decree Number: VI/MPR/2000 concerning the Separation of the TNI and Polri and MPR Decree Number: VII/MPR/2000 regarding what has been mentioned in Article 1, it is explained that the TNI and Polri are institutionally separate in accordance with their functions and roles.
4. Article 1 Paragraph (2) emphasizes the role of the TNI as a state tool that has a role in efforts to defend the country.
5. Article 10 Paragraph (1) Law no. 3 of 2002 concerning National Defense and Article 5 of Law no. 34 of 2004 concerning the Indonesian National Army.

The MK questioned the termination of the appointment of Brigadier General Andi Chandra due to the unavailability of implementing regulations as stated in MK Decision Number 67/PUU-XIX/2021. Furthermore, the implementing regulations listed should regulate the conditions and mechanisms that are calculated and appropriate for candidates for acting regional heads. The regulation conveyed by the MK spokesperson, Fajar Laksono, is part of the constitutional mandate (judicial order) to the government recorded in the MK decision.

Protests Filed by the Community

The appointment of the Head of the Central Sulawesi Regional BIN also gave rise to various rejections in the process. Rejection is an indication of community disapproval which emerged in an issue caused by the understanding that the appointment of Andi Chandra Asaduddin was not in line with the legal mandate of reform. The appointment of the Head of BIN as regent became a reason for the press to blame the Indonesian Ministry of Home Affairs for not being firm in carrying out their duties in implementing the law and ensuring the implementation of the principles of democracy and popular sovereignty.

Some of the protests filed by the press as representatives of the Indonesian people regarding this issue include:

1. Pressure on the Indonesian Ministry of Home Affairs to cancel the appointment of TNI Brigadier General Andi Chandra As'aduddin as PJ. The acting in question is the appointment of an official even though the position of the appointed official is still below the level of the position to be held. This inauguration is deemed not to be in accordance with applicable legislation. This inauguration also violates the principles of democracy in the Indonesian state structure.

2. Demands for the Indonesian Ministry of Home Affairs to carry out the reform mandate as appropriate, implement the law in accordance with existing provisions, and guarantee the implementation of democratic principles in the appointment of acting regents with the aim of filling the power vacuum in the Indonesian region where the term of office of the previous regional head has expired.
3. Urging the Indonesian Ministry of Home Affairs not to appoint TNI and Polri soldiers who are still active as regional heads, because this is contrary to the law (TNI Law, Pilkada Law, Polri Law, and Constitutional Court Decision No. 67/PUU-XXIX/2021 concerning the obligation of Indonesian citizens to uphold the laws and government in Indonesia.)
4. The pressure on the central government to immediately formalize implementing regulations regarding the appointment of acting regional heads in accordance with the Constitutional Court's decision and in accordance with democratic principles is also implemented according to a mechanism that guarantees openness, accountability and participation.
5. Urging the Ministry of Home Affairs to indicate the names of prospective regional head officials who wish to be appointed in accordance with a form of transparency so that the public can know and assess the democratic acting appointment process in accordance with the principles of constitutional law in Indonesia.

The protest was conveyed clearly in Jakarta on May 27, 2022. This process was conveyed by a coalition or combination of civil society from several organizations such as Kode Initiative, Tulisdem, Pusako Andalas, and Puskapol UI who submitted a request to the Ministry of Home Affairs to cancel the appointment. Their protest was conveyed openly to the entire community and could be accessed in the news column⁹.

If you look at the five points of protest listed above, there are actually several irregularities which are the main focus in the appointment of Brigadier General Andi Chandra. This appointment is clearly not in accordance with applicable laws and regulations and the regional head candidate is considered inadequate appropriate if you occupy a position above it. Regarding the reform mandate itself, this appointment is also considered inappropriate considering the history of the Indonesian nation where this issue is strongly associated with violations of democracy. Then with this appointment, the TNI Law, the Regional Election Law, and Constitutional Court Decision No. 67/PUU-XXIX/2021 seems to be considered not very important because it is clear that these provisions prohibit the appointment of active TNI soldiers to serve as regional heads who will definitely deal with politics. With this appointment, the government is also expected to immediately formalize implementing regulations regarding the appointment of acting regional heads in accordance with democratic principles and orders in the decision of the Constitutional Court (MK). Apart from that, democracy cannot be separated from the aspect of transparency, so the Minister of Home Affairs is also required to name the regional head candidates first before the appointment is made in accordance with democratic principles.

Even though it is clear that the appointment of acting regional heads without elections by the people is contrary to the principles of popular sovereignty and democratic principles, in reality the government seems indifferent to these violations of the law. For example, a member of Commission II DPR from the PDI Perjuangan political party, Muhammad Rifqinizamy Karsayuda, believes that the appointment does not contradict or oppose the law. Then there was Mahfud MD as the Coordinating Minister for Political, Legal and Security Affairs who himself stated that the appointment did not violate existing regulations because according to him TNI-Polri who had been given assignments outside their parent institutions could be appointed as acting regional heads.

Regional Head Election Process That Should Be Carried Out

From the case above, it can be seen that democratic regional elections in Indonesia should be carried out directly by the Indonesian people based on voting rights. However, in several cases there have been regional elections that were not elected democratically, such as the case we are reviewing, namely the appointment of the head of the Central Sulawesi regional BIN. In situations like this, the parties in power can impose their will to determine the next regional head, without going through a fair and democratic election process. A situation like this can be detrimental to the people, because regional heads who are elected undemocratically tend to lack legitimacy in the eyes of the public and cannot be trusted to lead the region well. Apart from that, regional elections that are not elected democratically can disrupt political stability, because there may be parties who feel disappointed and respond with protests or demonstrations.

To prevent regional elections that are not elected democratically, strict supervision is needed from various parties, such as the KPU, Bawaslu and civil society. In addition, strong and firm legal protection must be provided to ensure fairness in the regional head election process in order to hold regional elections that are clean and in accordance with the rules contained in Indonesian laws and regulations.

At the end of its decision, the Constitutional Court as the highest level of constitutional oversight in Indonesia stated that democratic terminology must be applied in the process of selecting acting regional heads. Fajar, as the spokesperson for the Constitutional Court, explained that the Constitutional Court in its decision which touched on the terminology of being chosen democratically meant that the government was required to issue and formalize implementing regulations.

CONCLUSION

People's sovereignty and democracy are two things that are always tied to each other because democracy can be realized if there is a sovereign life process of the people. Vice versa, people's sovereignty is created because of a democracy. Judging from its concept, popular sovereignty refers to the power and authority possessed by the people in making political and social decisions, while democracy refers to a political system based on the principles of popular participation, equal rights and freedom of opinion. When viewed from the principle, popular sovereignty and democracy uphold the election principle, namely that the people have the right to determine potential leaders by voting based on the principles of direct, general, free of secrets, honest and fair. Based on this, the protection of human rights for the people can be guaranteed in political participation, such as freedom of speech or opinion. Furthermore, the division of power is divided into 3 institutions, namely the legislative institution, the executive institution, and the judicial institution, each institution has different duties and functions, and all people must comply with the same regulations and be accountable for their actions in governing and making decisions to the people. .

The problem with the appointment of the Head of Central Sulawesi BIN by the Minister of Home Affairs as the Regent of West Seram, Maluku, is very deviant from the current democratic system, because the appointment of the regent should not be elected using a democratic system in accordance with Article 18 paragraph (4) of the 1945 Constitution, namely by means of holding general elections elected directly by the people. Many people who criticize the appointment of regional heads are considered to be rebelling against the government. Andi Chandra Asaduddin as the Regent of West Seram also violated Law 34/2004 concerning the TNI which explains that soldiers can only hold civilian positions after they resign or retire from their duties in the army because they are still under the auspices of the TNI with the rank of Brigadier General TNI. In this case, it does not rule out the possibility of

holding multiple positions which is clearly prohibited in Article 76 paragraph (1) h of Law no. 23 of 2014.

It is concluded in this case study that the appointment of acting regional heads without elections by the people is contrary to the principles of popular sovereignty and democratic principles. How important it is to strengthen the principle of popular sovereignty in the democratic system in Indonesia so that it can provide maximum benefits for the people and the country. In this case, participation and responsibility of all parties is needed to create a democratic system that is fair, equitable and just for all Indonesian people.

For the next election of leaders, whether President, Governor, Regent/Mayor, it is highly hoped that no one will hold elections without interference from the people and general elections for leaders must be carried out fairly and fairly by the people, because it is clearly stated in Article 2 paragraph (1) The 1945 Constitution which explains that sovereignty is in the hands of the people and is implemented according to the Constitution. To support democratic leadership elections, strict supervision is needed from various parties, the parties in question include the KPU, Bawaslu and civil society. In addition, strong and firm legal protection must be provided to ensure fairness in the process of selecting leadership candidates in order to hold elections that are clean and in accordance with statutory regulations.

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