

# IMPLEMENTATION OF MINISTER OF HOME AFFAIRS REGULATION NUMBER 4 OF 2023 CONCERNING ACTING GOVERNOR, ACTING REGENT, AND ACTING MAYOR REGARDING THE ELECTION OF THE ACTING MAYOR OF BENGKULU.

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## ABSTRACT

*the interior minister has published regulation ministry of home affairs number 4 of 2023 concerning the acting governor, acting regent and acting mayor explains the requirements, proposals, discussions and inauguration of acting governors, acting regents and acting mayors. On September 24 2023, the Governor of Bengkulu officially inaugurated the Acting Mayor of Bengkulu. This study aims to determine 1) How is the Implementation of Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents and Acting Mayors Regarding the Election of PJ Mayor of Bengkulu. 2) How is the Implementation of Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents and Acting Mayors Regarding the Election of PJ Mayor of Bengkulu. This type of research uses normative legal research with a statutory approach. Data collection was carried out by literature study. The results of the research are 1) The election of the Acting Mayor of Bengkulu is in accordance with the Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents and Acting Mayors because the requirements, proposals, discussions and inauguration of the PJ Mayor of Bengkulu are in accordance with the Regulation of the Minister of Home Affairs Number 4 of 2023 concerning Acting Governors, Acting Regent, and Acting Mayor 2) The validity or invalidity of the appointment of the Acting Mayor of Bengkulu is reviewed from the Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents and Acting Mayors regulated in Article 52 of Law Number 30 of 2014 concerning Government Administration as amended by Law Number 11 of 2020 concerning Job Creation. This law regulates the legal conditions for a decision, which states that the legal conditions for a decision are determined by an authorized official, made according to procedures, and the substance is in accordance with the object of the decision.*

## INTRODUCTION

The Unitary State of the Republic of Indonesia (NKRI) is a country that adheres to a democratic system, this is emphasized in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that sovereignty is in the hands of the people and is implemented according to the Constitution. Democracy from an etymological perspective, comes from Greek, namely from the words *demos* (people), and *cratein* (to rule).<sup>1</sup> So, literally the word democracy can be interpreted as the people ruling. According to *Tafsir R. Kranenburg*, the word "democracy," derived from two Greek words, means a way of governing by the people.<sup>2</sup>

Indonesia is a state based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution. This logically implies that all aspects of national and state life must be based on law. This also means that this country upholds the law and guarantees legal certainty for all its citizens. Indonesia has a constitution called the 1945 Constitution of the Republic of Indonesia (UUD 1945), which regulates the state framework and system of government of the Republic of Indonesia. The 1945 Constitution affirms that Indonesia is a unitary state in the form of a republic. It was also emphasized that Indonesia is a constitutional state with popular sovereignty. Elections are both a means and a measure of whether or not the principle of popular sovereignty (democracy) is being implemented in a country. Therefore, elections can be interpreted as a democratic means of establishing a system of state power based on popular sovereignty. As a democratic country, elections are a necessary consequence of Indonesia's implementation.

The constitutional basis for regulating the implementation of elections in Indonesia is regulated in Article 22E of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) to elect members of the People's Representative Council, Regional Representative Council, President and Vice President and Regional People's Representative Council. Article 18 paragraph (4) regulates the Election of Regional Heads, which states that Governors, Regents, and Mayors as heads of provincial, district, and city governments are elected democratically.

The 2024 Indonesian elections will be held simultaneously as mandated by Constitutional Court Decision Number 55/PUUXVII/2019, namely the Election for the President and Vice President, the Election of Members of the DPR and DPD, DPRD and the Election of Regional Heads (Governor & Deputy Governor, Regent & Deputy Regent and Mayor & Deputy Mayor). Simultaneous regional head elections in Indonesia have actually been held since 2015, 2017, 2018, and 2020, and will continue again in 2024. This has resulted in many regional head positions, both at the provincial and district/city levels, ending their terms before the 2024 simultaneous regional head elections.

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<sup>1</sup> Ni'matul Huda, 2014. *Ilmu Negara*, Raja Grafindo, Jakarta, hlm. 196

<sup>2</sup> Ni'matul Huda dan M.Imam Nasef, 2017. *Penataan Demokrasi dan Pemilu di Indonesia Pasca Reformasi*, Kencana Media Jakarta

There are 101 regional heads whose terms expire in 2022, and 170 regional heads whose terms expire in 2023. This means that definitive regional head positions will be vacant in 271 provinces, regencies, and cities over the next two years. Meanwhile, simultaneous regional elections will not be held until 2024.

In Bengkulu Province, two regencies/cities have appointed new regional heads: Bengkulu City and Central Bengkulu Regency. Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law has provided a solution, as it stipulates that vacant regional head positions will be filled by acting regional heads through an appointment process until a new regional head is elected in the 2024 simultaneous regional elections.

Constitutional Court Decision Number 15/PUU-XX/2022, which stated that the Government needs to consider and pay attention to issuing implementing regulations as a follow-up to Article 201 of Law No. Law Number 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, in this case the Minister of Home Affairs has issued Ministerial Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayor Regarding the Election of Acting Mayor of Bengkulu in 2023 so that the mechanism for appointing acting governors, acting regents, and acting mayors can take place openly, transparently, and accountably by paying attention to democratic principles.

Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors explains the requirements, proposals, discussions, and inaugurations of Acting Governors, Acting Regents, and Acting Mayors. Regarding the proposal, according to Article 9 paragraph (1) of Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors, which states, "Proposals for Acting Regents and Mayors shall be made by:

- a. Minister
- b. Governor
- c. Regional People's Representative Council (DPRD) through the chairperson of the Regency/City DPRD."

On September 24, 2023, the Governor of Bengkulu officially inaugurated Ir. Arif Gunadi, M.Si., as Acting Mayor of Bengkulu. The inauguration was carried out on behalf of the President of the Republic of Indonesia, in accordance with Decree No. 100.2.1.3-3960 of 2023 concerning the Appointment of Acting Mayors of Bengkulu. The problem is that Ir. Arif Gunadi, M.Si in the proposal of the Governor of Bengkulu and the Bengkulu City DPRD, but the name of Ir. Arif Gunadi, M.Si appeared and was proposed by the Central Government, in this case the Minister of Home Affairs.

## METHOD

This research uses a normative legal research method. Normative legal research is legal research conducted by examining library materials or secondary data.<sup>3</sup> The discussion is based on laws and regulations, documents, legal journals, research reports, and relevant references. Normative legal research is also called doctrinal legal research, meaning that this research is conducted or directed only at written regulations or other legal materials. It can also be called library or document research, because this research is often conducted on secondary data found in libraries and the materials used are various literature relevant to the problem being studied.<sup>4</sup>

Peter Mahmud Marzuki defines normative legal research as the process of identifying legal rules, legal doctrines, and legal principles to address relevant legal difficulties. In this type of research, law is often understood as what is contained in Laws or principles or standards that serve as benchmarks for acceptable human behavior.<sup>5</sup>

In legal research, there are several approaches. With these approaches, researchers will obtain information from various aspects regarding the issue being sought. In normative legal research, several methods are used, including the statute approach, the case approach, the historical approach, the comparative approach, and the conceptual approach.<sup>6</sup>

## RESULT AND DISCUSSION

### A. Implementation of the Regulation of the Minister of Home Affairs Number 4 of 2023 concerning the Acting Governor, Acting Regent, and Acting Mayor regarding the Election of the Acting Mayor of Bengkulu.

Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors explains the requirements, proposals, discussions, and inaugurations of Acting Governors, Acting Regents, and Acting Mayors. To fill vacant positions of governor and deputy governor, regent and deputy regent, mayor and deputy mayor, the Government appoints Acting Governors, Acting Regents, and Acting Mayors to lead regional government administration until the inauguration of the definitive governor and/or deputy governor, regent and/or deputy regent, mayor and/or deputy mayor.

Acting Governors, Acting Regents, and Acting Mayors are appointed by meeting the following requirements:

1. Experience in government administration, as evidenced by a professional record;
2. Civil Servants (ASN) or officials in certain ASN positions holding Middle Positions

<sup>3</sup> Soerjono Soekanto & Sri Mamudji, 2003. *"Penelitian Hukum Normatif: Suatu Tinjauan Singkat"*, PT.Jakarta: Raja Grafindo Persada, hal.13

<sup>4</sup> Suratman dan Philips Dillah, 2014, Metode Penelitian HukumAlfabeta, Bandung. Hal 74

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*. Kencana Cet. Ke-10, Jakarta. Hal 93.

<sup>6</sup> Amiruddin dan H. Zainal Asikin, 2006. *Pengantar Metode Penelitian Hukum*. PT.Raja Grafindo Persada, Jakarta hal 118.

(JPT Madya) within the Central Government or Regional Government for Acting Governor candidates, and Pratama Positions (JPT Pratama) within the Central Government or Regional Government for Acting Regent and Acting Mayor candidates;

3. The employee's performance appraisal, or other assessment, for the past 3 (three) years has received at least a good rating;
4. Has never been subject to serious disciplinary action in accordance with statutory provisions; and
5. Is physically and mentally healthy, as evidenced by a certificate from a government hospital.<sup>7</sup>

The nomination of Acting Regent and Acting Mayor shall be made by:

1. The Minister;
2. The Governor; and
3. The Regional People's Representative Council (DPRD) through the Chairperson of the Regency/City DPRD.

The Minister, as referred to in paragraph (1) letter a, shall propose three (3) candidates for Acting Regent and Acting Mayor who meet the requirements. The Governor, as referred to in paragraph (1) letter b, may propose three (3) candidates for Acting Regent and Acting Mayor who meet the requirements to the Minister. The DPRD, through the Chairperson of the Regency/City DPRD as referred to in paragraph (1) letter c, may propose three (3) candidates for Acting Regent and Acting Mayor who meet the requirements to the Minister.<sup>8</sup>

In proposing the Acting Mayor of Bengkulu, the Governor of Bengkulu shall propose the following candidates for Acting Mayor of Bengkulu:

| NO | NAMA/NIP  | PANGKAT/<br>GOL             | JABATAN  |
|----|---|-----------------------------|--|
| 1. | SYAFRIANDI, S.E., S.T., M.Si<br>19750216 200312 1 003 | Pembina<br>Utama Muda/IV,C  | Kepala Dinas Kelautan<br>dan Perikanan Provinsi<br>Bengkulu              |
| 2. | EDI SUSANTO B, S.Sos., M.M<br>19680418 198803 1 001   | Pembina Utama<br>Muda/IV,C  | Kepala Biro Organisasi<br>Setda Provinsi Bengkulu                        |
| 3. | Dr. SOEMARNO, M.Pd<br>19660311 199703 1 002           | Pembina Utama<br>Madya/IV.d | Kepala Badan<br>Pengembangan Sumber<br>Daya Manusia Provinsi<br>Bengkulu |

*Source: Archives of the Government Bureau of the Bengkulu Provincial Secretariat*

<sup>7</sup> Peraturan Menteri Dalam Negeri Nomor 4 Tahun 2023

<sup>8</sup> Ibid

In addition, the Bengkulu City DPRD also proposed the following candidates for Acting Mayor of Bengkulu:

| NO | NAMA                         | PANGKAT /GOL             | JABATAN   |
|----|------------------------------|--------------------------|---|
| 1. | SYAFRIANDI, S.E., S.T., M.Si | Pembina Utama Muda/IV,C  | Kepala Dinas Kelautan dan Perikanan Provinsi Bengkulu |
| 2. | ATISAR SULAIMAN, S.Ag., MM   | Pembina Utama Muda/IV,C  | Kepala Satuan Polisi Pamong Praja Provinsi Bengkulu   |
| 3. | KARMAWANTO, M.Pd             | Pembina Utama Madya/IV.d | Kepala Dinas Pariwisata Provinsi Bengkulu             |

*Source: Bengkulu City DPRD Archives*

According to Article 10 of the Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors, the discussion regarding Acting Regents and Mayors includes:

1. The proposals referred to in Article 9 paragraph (1) shall be discussed by the Minister, from the nine (9) names to three (3) candidates for Acting Regents and Acting Mayors, and may involve ministries/non-ministerial government agencies.
2. The ministries/non-ministerial government agencies referred to in paragraph (1) include:
  - a. Ministry of State Secretariat;
  - b. Ministry of State Apparatus Empowerment and Bureaucratic Reform;
  - c. Cabinet Secretariat;
  - d. State Civil Service Agency;
  - e. State Intelligence Agency; and
  - f. other ministries/institutions as needed.
3. The Minister shall submit three (3) proposed candidates for Acting Regent and Acting Mayor to the President through the Minister of State Secretary for the President's consideration based on the results of the discussions referred to in paragraph (1).
4. The appointment of the Acting Regent and Acting Mayor shall be stipulated by a Ministerial Decree.<sup>9</sup>

The appointment of the Acting Mayor of Bengkulu shall be stipulated by Decree of the Minister of Home Affairs Number 100.2.1.3-3960 of 2023 concerning the Appointment of the Acting Mayor of Bengkulu.

Article 11 of Regulation of the Minister of Home Affairs Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors explains the inauguration of Acting Regents/Mayors, as follows:

<sup>9</sup> *Ibid*

1. The Governor, on behalf of the President, inaugurates the Acting Regent and Acting Mayor.
2. In the event that the Governor is unable to attend, the inauguration of the Acting Regent and Acting Mayor shall be conducted by the Deputy Governor.
3. If the Governor and/or Deputy Governor are unable to carry out the inauguration as referred to in paragraph (1) and paragraph (2), the Minister shall inaugurate the Acting Regent and Acting Mayor.
4. If the Acting Regent and Acting Mayor's terms of office are extended by the same person, the Acting Regent and Acting Mayor shall not be re-inaugurated.<sup>74</sup> During the inauguration of the Acting Mayor of Bengkulu, the Governor of Bengkulu, on behalf of the President of the Republic of Indonesia, officially inaugurated Ir. Arif Gunadi, M.Si., as Acting Mayor of Bengkulu on September 24, 2023. This inauguration is in accordance with Decree of the Minister of Home Affairs Number 100.2.1.3-3960 of 2023 concerning the Appointment of the Acting Mayor of Bengkulu.

Based on the explanation above, it can be concluded that the election of the Acting Mayor of Bengkulu is in accordance with the Regulation of the Minister of Home Affairs Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors because the requirements, proposals, discussions and inauguration of the Acting Mayor of Bengkulu are in accordance with the Regulation of the Minister of Home Affairs Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors, however, the Ministry of Home Affairs did not heed and consider the proposals proposed by the Governor and the Bengkulu City DPRD, meaning the weak bargaining position of the Governor of Bengkulu and the Bengkulu City DPRD.

**B. The Validity of the Appointment of the Acting Mayor of Bengkulu Reviewed from the Regulation of the Minister of Home Affairs Number 4 of 2023 Concerning the Acting Governor, Acting Regent, and Acting Mayor Regarding the Election of the Acting Mayor of Bengkulu.**

According to the Big Indonesian Dictionary (KBBI), legitimacy comes from the word "absah." Validity has a noun meaning, so validity can refer to the name of a person, place, or all objects and anything that is considered a legal entity. Validity also means legitimacy.<sup>10</sup>

In this regard, the validity or invalidity of the appointment of the Acting Mayor of Bengkulu, as reviewed by the Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors, can be seen in Law Number 30 of 2014 concerning Government Administration. As amended by Law Number 11 of 2020 concerning Job Creation, as material state administrative law, the legal requirements for a decision are regulated, as stipulated

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<sup>10</sup> Departemen Pendidikan dan Kebudayaan, 1991. Kamus Besar Bahasa Indonesia, Jakarta. Hal. 281.

in Article 52, which states:

1. The requirements for a valid decision include:
  - a. Issued by an authorized official.
  - b. Made in accordance with procedures, and
  - c. Substance that corresponds to the object of the decision
2. The validity of the decision referred to in paragraph 1 is based on the provisions of laws and regulations and the Regional Regulations (AUPB).

The Appointment of the Acting Mayor of Bengkulu as Reviewed by Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors is stipulated in Minister of Home Affairs Decree Number 100.2.1.3-3960 of 2023 concerning the Appointment of the Acting Mayor of Bengkulu.

Furthermore, the appointment of the Acting Mayor of Bengkulu is made in accordance with procedures, namely in accordance with Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors. The procedures are as follows:

1. The proposal for the Acting Mayor of Bengkulu is made by:
  - a. Minister
  - b. Governor
  - c. Regional People's Representative Council (DPRD) through the Chairperson of the Bengkulu City DPRD

In proposing the Acting Mayor of Bengkulu, the Governor of Bengkulu proposed the following candidates for Acting Mayor of Bengkulu:

| NO | NAMA/NIP  | PANGKAT/<br>GOL             | JABATAN  |
|----|---|-----------------------------|--|
| 1. | SYAFRIANDI, S.E., S.T., M.Si<br>19750216 200312 1 003 | Pembina<br>Utama Muda/IV,C  | Kepala Dinas Kelautan<br>dan Perikanan Provinsi<br>Bengkulu              |
| 2. | EDI SUSANTO B, S.Sos., M.M<br>19680418 198803 1 001   | Pembina Utama<br>Muda/IV,C  | Kepala Biro Organisasi<br>Setda Provinsi Bengkulu                        |
| 3. | Dr. SOEMARNO, M.Pd<br>19660311 199703 1 002           | Pembina Utama<br>Madya/IV.d | Kepala Badan<br>Pengembangan Sumber<br>Daya Manusia Provinsi<br>Bengkulu |

*Source: Archives of the Government Bureau of the Bengkulu Provincial Secretariat*

In addition, the Bengkulu City DPRD also proposed the following candidates for Acting Mayor of Bengkulu:

| NO | NAMA | PANGKAT/<br>GOL | JABATAN |
|----|------|-----------------|---------|
|    |      |                 |         |

|    |                              |                          |   |
|----|------------------------------|--------------------------|---|
| 1. | SYAFRIANDI, S.E., S.T., M.Si | Pembina Utama Muda/IV,C  | Kepala Dinas Kelautan dan Perikanan Provinsi Bengkulu |
| 2. | ATISAR SULAIMAN, S.Ag., MM   | Pembina Utama Muda/IV,C  | Kepala Satuan Polisi Pamong Praja Provinsi Bengkulu   |
| 3. | KARMAWANTO, M.Pd             | Pembina Utama Madya/IV.d | Kepala Dinas Pariwisata Provinsi Bengkulu             |

*Source: Bengkulu City DPRD Archives*

2. Discussion of the Acting Mayor of Bengkulu from the 9 proposed names was discussed by the Minister to 3 names and could involve ministries/non-ministerial government institutions, then the minister submitted the 3 proposed names to the President through the Minister of State Secretariat as material for the president's consideration, then the appointment of the Acting Mayor of Bengkulu was determined by Decree of the Minister of Home Affairs Number 100.2.1.3-3960 of 2023 concerning the Appointment of the Acting Mayor of Bengkulu.
3. The inauguration of the Acting Mayor of Bengkulu was carried out by the Governor of Bengkulu on behalf of the President at the Semarak Bengkulu Grand Hall on September 24, 2023.

Based on the explanation above, it can be concluded that the validity of the appointment of the Acting Mayor of Bengkulu is determined by Regulation of the Minister of Home Affairs Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors, as regulated in Article 52 of Law Number 30 of 2014 concerning Government Administration, as amended by Law Number 11 of 2020 concerning Job Creation. This law stipulates the valid requirements for a decision, stating that a decision must be made by an authorized official, be made in accordance with procedures, and have substance that aligns with the object of the decision.

## Conclusion

Based on the research results and discussions outlined above, the following conclusions can be drawn:

1. The election of the Acting Mayor of Bengkulu complies with Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors. The requirements, proposals, discussions, and inauguration of the Acting Mayor of Bengkulu are in accordance with Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors. However, the Ministry of Home Affairs disregarded and considered the proposals submitted by the Governor and the Bengkulu City Regional People's

Representative Council (DPRD).

2. The validity or invalidity of the appointment of the Acting Mayor of Bengkulu is reviewed in accordance with Minister of Home Affairs Regulation Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors as regulated in Article 52 of Law Number 30 of 2014 concerning Government Administration, as amended by Law Number 11 of 2020 concerning Job Creation. In this law, the legal requirements for a decision are regulated, which state that the legal requirements for a decision are that it must be determined by an authorized official, made in accordance with procedures, and the substance must be in accordance with the object of the decision.

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