

LEGAL STANDING OF DEPUTY REGIONAL HEAD AS A REPLACEMENT OF REGIONAL HEAD

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Abstract

Deputy Regional Head is one of the elements contained in the system of regional government. This fact illustrates that the deputy head of the region is an official in the structure of the regional government. However, the legal position of the deputy head of the region is considered unconstitutional. Because the deputy head of the Region is not clearly regulated in the 1945 Constitution of the Republic of Indonesia. Although in the relevant laws, it has regulated the legal position and its very few duties and authorities. This study will analyze the main issues through a normative juridical approach, which focuses on various legal rules as well as the central theme of this study. This study uses the literature study method. Deputy head of the region as long as serving as executor of the task of the regional head, has limited authority to act on behalf of the regional head concerned. So far, the government has not yet made regulations relating to the duties and authority of the executor of the regional head held by the deputy regional head.

Keyword: Deputy Regional Head, Tasks Executor, Regional Government, Authority

1. INTRODUCTION

The provisions of the 1945 Constitution, which are the legal basis of the Republic of Indonesia, have clearly described a constitutional system based on the separation of powers between the Legislature, the Executive and the Judiciary. By referring to the country's legal basis namely the 1945 Constitution, it can be found that there is an section which clearly contains provisions relating to Regional government.

It has been regulated in the Provisions of article 18 paragraph (1) of the 1945 Constitution, which stipulates that "the unitary State of the Republic of Indonesia is divided into provincial regions, and the province is divided into regencies and cities which have Regional Governments, which are regulated by Law .

The Regional Government which consists of provincial government, district government and city government is sovereign to regulate and manage its own government affairs according to the principles of autonomy and assistance. However, to regulate and manage the government affairs themselves, the regional government must have a leader or regional head in accordance with the level of regional government he leads.

Based on the provisions of article 18 paragraph (4) of the 1945 Constitution, it stipulates that "Governors, Regents and Mayors as respective heads of provincial, district and city regional governments shall be democratically selected." Based on these provisions, it can be understood that each regional government has a leader or regional head with the term regional head different. This also has consequences for the duties and authorities they have, and the jurisdiction or administration of the government under their leadership. Based on the provisions of Law Number 23 of 2014 concerning Regional Government in conjunction with Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government, the provisions of Article 5 paragraph (2) stipulate that "governmental authority as referred in paragraph (1) described in various government affairs. "

Based on the provisions of Article 5 paragraph (4) of Law Number 23 of 2014 concerning Regional Government in conjunction with Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government, stipulates that "the

implementation of government affairs as referred to in paragraph (2) in the regions is carried out based on the principles of decentralization, the principle of deconcentration, and the task of assistance." Based on General Provisions Article 1 Number 8 of Law Number 23 Year 2014 concerning Regional Government, stipulates that "Decentralization is the transfer of government affairs by the central government to autonomous regions based on the principle of autonomy." According to HAW. Widjaja, Autonomy is the transfer of government affairs to regional governments which are operational in the framework of the government bureaucracy system. The purpose of autonomy is to achieve effectiveness and efficiency in service to the community. basically decentralization is the incarnation of local community autonomy to solve various problems and the provision of services that are locality (local area) for the welfare of the community concerned. In order for regional autonomy to be carried out properly, it is necessary to have a form of government in the region, to exercise all power that has been delegated by the central government to the autonomous regions. The form that is meant by governance in a region is Regional Government. Based on General Provisions Article 1 Number 2 of Law Number 23 Year 2014 Regarding Regional Government decides that "Regional Government is the administration of government affairs by the regional government and the regional people's Representative Council according to the principle of autonomy and co-administration with the principle of broadest autonomy in the system and the principle of the unitary State of the Republic of Indonesia as referred to in the 1945 Constitution. Whereas, in General Provisions Article 1 Number 3 of Law Number 23 of 2014 concerning Regional Government, stipulates that "Regional Government is the Regional Head as an element of Regional Government organizing who leads the implementation of government affairs under the authority of the autonomous region.

It can be understood that the whole implementation of government affairs which are the authority of autonomous regions can only be led (held)

¹Mukti Fajar ND dan Yulianto Ahmad, Dualisme Penelitian Hukum Normatif dan Empiris, Pustaka Pelajar, Yogyakarta, 2010, h. 14.

by the Regional Head as an element of the Regional Government. Regarding this matter, it has been regulated in the provisions of Article 63 paragraph (1) of Law Number 23 of 2014 concerning Regional Government in conjunction with Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government, which determines that : "The Regional Head as referred to in Article 59 paragraph (1) shall be assisted by the Deputy Regional Head." So that, it can be understood that the legal position of the Regional Deputy Head has been recognized by the Law.

2. RESEARCH METHODOLOGY

2.1. The Type of Research

This study is a normative legal research, which is a study that puts the law as a norm system that is about the principles, norms, statutory regulations, court decisions, agreements and doctrines ¹. More specifically, this legal research is a process to find the rule of law and legal doctrines in order to answer the legal issues at hand. ²

2.2. Research Approach

This normative legal research uses four approaches, namely: a conceptual approach or conceptual approach, a statutory approach, historical approach, and a case study approach³

3. DISCUSSION

3.1. Legal Standing of Deputy Regional Head in Regional Government in Indonesia

The deputy head of the region is an official in the structure of the regional government, but his existence is still a polemic with the assumption that the position of deputy regional head is an unconstitutional position because it is not explicitly stated in the 1945 Constitution. In Article 18 Paragraph (4) of the 1945 Constitution determine "the governors, regents, and

²Peter Mahmud Marzuki, Penelitian Hukum, Kencana, Jakarta, 2009, h. 35.

³Abdul Kadir Muhammad, Hukum Dan Penelitian Hukum, Citra Aditya Bakti, Bandung 2004 Hlm 54

mayors of each as the head of the provincial, district and city regional government elected democratically." Based on the provisions of Article 18 Paragraph (4) of the 1945 Constitution, it can be seen that there is no mention at all of the existence of representatives District head. if seen from the contents of article 18 Paragraph (4) of the 1945 Constitution, the deputy head of the region is not known because the content of this article only mentions the Regional Head.

The position of deputy head of region is often considered only as a complement to the regional government structure, where the position of the deputy head of the region is not considered along with the lack of duties and authority given to the deputy regional head, and this greatly affects the harmonious relationship between regional heads and deputy head of the region. In addition, the problematic of the deputy head of the region in exercising his authority is very limited in the laws governing it, and whether these limitations will be a separate problem for the performance of the deputy regional head later, all these problems will certainly be anticipated if there is coordination and mutual trust between regional heads and deputy regional heads so that positions held by these individual leaders can be carried out with full responsibility, this is where an ideal regional deputy head election mechanism is needed, in order to create harmony.

The discussion about the position of the deputy regional head, the problem that always arise is related to the authority and role of the deputy head of the region in carrying out the tasks he is carrying. Although the position of deputy regional head is still considered an unconstitutional position because it is not explicitly mentioned in the 1945 Constitution. The development of the authority and role of the deputy regional head has been regulated in the Law on Regional Government, where the law on regional government during After the reformation there have been several revisions and changes. However, whether the Law on Regional Government has set clearly and in detail for the authority of the deputy regional head, because the legal basis such as the Law will greatly determine later the authority and duties of the deputy regional head which will impact on the position of the deputy regional head in the Regional Government. In 2014, the government together with the House of Representatives passed a Law on Regional Government to update the contents of

the Law on Regional Government, namely the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government. However, as previously stated, the laws governing regional government have been revised several times.

The revisions have changed, either reduced or added to the existing articles, as well as the norm content contained in those articles. Likewise, in the most recent revision of the law, Law of the Republic of Indonesia number 9 of 2015 concerning the second amendment to Law number 23 of 2014 concerning regional government, in this law only contains the provisions of articles with at least 6 new articles . One of them, the revised article is the provisions of article 63 paragraph (1) the legal position of the deputy regional head. In the provisions of the article, it has been determined that "the regional head referred to in article 59 paragraph (1) is assisted by the deputy regional head."

Based on the norms of the article, it can be understood that the deputy head of the region has a legal position. However, the deputy head of the region plays the role of assistant head of the region in carrying out regional government. The provisions of the article can also be understood that the law instructs regional heads to clearly divide their duties and authority to the deputy regional heads who assist them in carrying out the wheels of government. The authority and tasks obtained by the deputy head of the region are determined by the regional head, so that the deputy head of the region here seems only as a supporting figure waiting for orders, without being able to do anything if the regional head makes a mistake or something.

Another authority obtained by the deputy head of the region is that the deputy head of the region carries out the duties and authority of the regional head if the regional head is serving a period of detention or being temporarily unavailable. So, it can be seen in terms of the authority of the deputy head of the region so far has not received significant changes both in the position, duties and authority he has. The deputy head of the region is still underestimated so that there is no significant change in the authority of the deputy regional head. The deputy head of the region only assists the duties and authority of the regional head, and does not have clear boundaries on the duties and authorities possessed by the deputy regional head.

The role that emphasized in the legislation above is the role of the deputy regional head as an assistant to the

regional head without being able to issue or take certain policies, because the authority of the policy will only be taken and issued by the regional head. Although there are some regions that regulate themselves about the authority and role of regional representatives with Regional Regulations, a strong legal umbrella is the Law, where this legal umbrella will have more strong legal force in regulating matters regarding the authority and role of the deputy head regions on a National scale.

3.2. The Limitation of Duties and Authorities of Deputy Regional Head As Acting Duties of Regional Head

Based on the law of the Republic of Indonesia number 9 of 2015 concerning the second amendment to law number 23 of 2014 concerning regional governance, it can be found that there is an article regulating the legal position of the deputy regional head. This provision has been regulated in the provisions of article 63 paragraph (1) of the law of the Republic of Indonesia number 9 of 2015 concerning the second amendment to law number 23 of 2014 concerning regional government which determines that "the regional head as referred to in Article 59 paragraph (1) assisted by the deputy head of the region. "The existence of this article, has answered the position of the deputy regional head constitutionally as part of the regional government administrators. Therefore, the role of the deputy head of the region in the administration of regional government cannot be doubted. Because, constitutionally, the deputy head of the region has obtained his legal position. Although, in the provisions of the article, the deputy head of the region only plays the role of assistant regional head.

Deputy regional head who already has a legal standing as contained in the provisions of article 63 paragraph (1) of the law of the Republic of Indonesia number 9 of 2015 concerning the second amendment to law number 23 of 2014 concerning regional government, has an extraordinary impact of the importance of the existence of a norm governing the duties, authorities and obligations of the deputy head of the region in carrying out his role as part of the regional government administrators. It is intended that the deputy head of the region can understand the limitations of the task, and his authority as an assistant to the regional head in organizing regional government.

Based on the law of the Republic of Indonesia number 9 of 2015 concerning the second amendment to law number 23 of 2014 concerning regional governance, it has been arranged about the duties of the deputy head of the region in organizing regional government. These provisions have been regulated in the provisions of Article 66 of the Law of the Republic of Indonesia number 9 of 2015 concerning the second amendment to law number 23 of 2014 concerning regional government, has been regulated in the provisions of that article, concerning matters relating to the duties of the deputy regional head obtained directly from the law, duties and obligations given by the regional head to the deputy head of the region, the deputy head of the region signs an integrity pact and is responsible to the regional head, and the deputy head of the region is obliged to carry out tasks with the regional head until the end of his term of office

Based on the provisions of that article, the deputy regional head can carry out his duties in accordance with those stipulated in the provisions of the article. However, in a system of government - in this case - the current regional government, it is often found that there is a vacancy in the position of regional head left by the authorized official, because the regional head is tripping over a legal case. Thus, resulting in the regional head must undergo a period of detention which makes the regional head in question is temporarily unavailable.

The government responds to these legal events by following a legal practice that has long been embedded in the existing legal system of government. The response made by the government to the legal event was to appoint a deputy regional head who served, as Acting Task of the head of the region replaced the leadership duties of the regional head who was serving a period of detention. Then, in the news, the deputy head of the region who replaces the temporary task of the regional head is called the Acting Head of the Region.

Legal habits or practices carried out by the government in appointing deputy regional heads as executors of the duties of regional heads, so far the government has not been certain which legal basis is used to make legal decisions on the appointment of deputy regional heads, because in the provisions of law number 9 of 2015, there are 2 (two) articles that can be used as a legal basis for the appointment of a deputy regional head as the executor of the task of the regional head. The articles

referred to are the provisions of article 65 paragraph (4) and Article 66 of the law of the Republic of Indonesia number 9 of 2015 concerning the second amendment to law number 23 of 2014 concerning regional government. These two articles outline a norm that regulates the vacant position of the regional head left by the relevant official, because the official is serving a period of detention or being temporarily absent, resulting in the government's obligation to appoint the deputy head of the region as executing the duties of the regional head to fill the vacant position.

The deputy regional head has the opportunity to carry out the duties and authority of the regional head, if the head of the area concerned is undergoing a period of detention or being temporarily unavailable. This situation opens the opportunity for the deputy head of the region to be appointed as executor of the task, which is the legal basis for the deputy head of the area to carry out the duties and authority of the regional head. It can be found in the provisions of Article 21 paragraph (3), which stipulates that "Employees who carry out their duties and functions as Daily Executors or Executors have the same authority as Structural Officers who are temporarily unavailable or vacant Structural Positions, except:

- A. take substantial policies that have an impact on the budget;
- B. make decisions that are substantial;
- C. impose discipline;
- D. provide performance appraisals of employees; and
- E. take other binding policies. "

4.CONCLUSION

A. The legal position of the deputy regional head in the regional government system in Indonesia is contained in the provisions of article 63 paragraph (1) of the law of the Republic of Indonesia number 9 of 2015 concerning the second amendment to law number 23 of 2014 concerning regional government. The provisions of the article state expressly to answer the problem of the legal position of the deputy regional head which has been a matter of debate. This is because the legal position of the deputy regional head is not contained in the basic rules of the Indonesian state

or is not regulated in the provisions of the 1945 Constitution.

B. The legal position of the deputy head of the region has an extraordinary impact on the duties and authorities attached to his position. Regarding the authority possessed by the deputy head of the region, obtained through 2 (two) processes of delegation of authority. the authority of the deputy head of the region is obtained through delegation of authority by attribution and mandate delegation of authority. The delegation of authority which is a direct source of law is reflected in the provisions of Article 66 of the Republic of Indonesia Law number 9 of 2015 concerning the second amendment to Law number 23 of 2014 concerning regional government. Meanwhile, the delegation of authority obtained through the mandate is also regulated in the provisions of the same article, namely the provision of Article 66 of the Republic of Indonesia Law No. 9 of 2015 concerning the second amendment to Law number 23 of 2014 concerning regional government

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