

Assignment of Police Officers as Provisional Governor: Case Study an Acting Officer's Governor of West Java

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Abstract

In the Indonesian State of Administration system, it has been stipulated that if a regional head has entered the end of his office term, then it will be temporarily replaced by the Acting Officer regional head. In 2018, the Minister of Home Affairs formally inaugurates Police Commissioner-General, M. Iriawan as an Acting Officer of West java. The appointment of Police Commissioner-General M. Iriawan as an Acting Officer's Governor was not accompanied by his resignation from his active police service because of his position as a senior high-ranking official within the National Resilience Institute. This could drag the police institutions to violate the constitution because the constitutions have given strict limits on the role and authority of the police which are related to maintaining public order and security, law enforcement, protection, and service to the public. This study used a normative juridical type of research, using a conceptual approach, a statute approach, and a case approach. The data was analyzed qualitatively with an inductive method, which is trying to find the rules, values, and legal norms contained in the library, which is discussed after that. The result of this study showed that the appointment of high ranking officers of the Republic of Indonesia Police, which is equaled by the position of senior leadership of the central government as an acting officers (Pj) governor, is not in line with and contradictory to the provisions contained in Article 28 Paragraph (3) of the Republic of Indonesia Law Number 2 of 2002 concerning the Indonesian National Police.

Keywords: *acting officer, regional head, national police*

Introduction

As the regional government administrators, the regional heads have duties and obligations and are responsible for leading the implementation of government affairs in the region. It is stated in Article 1 Number 3 of Law Number 23 of 2014 concerning Regional Governments, which states that: "Regional Head as an element of regional administration which leads the implementation of government affairs that become the authority of the regional autonomy" (Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah, 2014). The importance of the regional head' role because if a vacancy occurs, it will lead to problems in governance in the regional administration. (Marwi, 2016)

On June 18th, 2018, The Minister of Home Affairs officially inaugurate police commissioner-general M. Iriawan as an acting officers (Pj) the Governor of West Java to replace the executant daily Governor of West Java Iwa karniwa, through Presidential Decree Number 106/ P of 2018 concerning inauguration of the Dismissal of the Governor/ Deputy Governor of West Java for 2013-2018 Term and Appointment of Official Governor of West Java. The inauguration was carried out because starting from June 13, 2018, the terms office of Ahmad Heryawan and Deddy Mizwar as a West Java Governor and Deputy Governor for the 2013-2018 period has ended. The acting officer of Governor (Pj) will be in charge until the inauguration of the new Governor and Deputy Governor through the regional head elections (Pilkada).

Government's policy to keep inaugurating Commissioner General of Police, M. Iriawan, as an Acting Officer's Governor of West Java certainly raises a question mark, Is a high-ranking police officer allowed

to become an Official Regional Head? This is because the Official Regional Head is a civilian office that has almost the same authority as the definitive regional head. Also, Police Commissioner-General M. Iriawan did not resign from an active police service when appointed as an Official Governor of West Java.

Related to this, the Ministry of Home Affairs argues that the competence of Police Commissioner-General, M. Iriawan, has no doubt and it's considered to be more familiar with and understand the conditions of West Java because he once served as a Chief of West Java Regional Police.(Nadlir, 2018) The Minister Home Affairs assumed that the appointment of an Acting Officer's Governor was following the provisions because Commissioner General of Police, M. Iriawan has no longer held the structural position of the Indonesian National Police Headquarters, but had been transferred to become the Main Secretary of the National Resilience Institute.(Lazuardi, 2018) Even though, the constitution has given strict limits on the role and authority of the National Police, which is related to law enforcement. It's stated in Article 30 paragraph (4) of the 1945 Constitution which reads: "The National Police of Republic Indonesia as a state instrument that maintains public security and order must protect, serve the community, and enforce the law". Therefore, the appointment of High-Ranking Police officers as an Acting Officer's Governor has denied the mandate of Reform to eliminate dual function of the Armed Forces of the Republic Indonesia (TNI/Polri) which during the new order government was given a dual role to be involved in practical politics, so they could occupy the political positions which are generally filled by civilians.

Moreover, at this time we are entering the era of national regional head elections that held simultaneously in 2024 in 34 provinces and 504 Regencies/ Cities. This condition automatically causes many vacancies in the position of the regional head, so it will take a lot of temporary regional head officials either in the form of Temporary Officials (Pjs) or Acting Officer of Regional Head who will fill the vacancy of Regional Head position for a while. It is inconceivable that the vacancy in the position of regional head will be filled by active high-ranking police officers who also hold positions and that positions are equalized as a high leadership/ Ministries within the scope of the central government.

Method

This study used a normative juridical type of research, using a conceptual approach, a statute approach and a case approach.(Solehudin, n.d.) This approach is used because the object of this study is to examine matters relating to the appointment of high-ranking police officers as an Acting Officer's Regional head according to relevant laws and regulations and then analyzed in line with existing legal concepts and principles in general administrative law.

The collection of legal materials was carried out by conducting an inventory and grouping of legal materials into an information system, making it easier to trace the legal materials back. Legal materials were collected through documentation studies, namely by recording the sources of primary legal materials, secondary legal materials, and tertiary legal materials.

The data that has been obtained is collected and compiled and edited to check and examine whether it is correct and can be accounted for according to reality (accurate source) with consideration of reliability and validity. Then, the data was analyzed qualitatively. And then data analyzed used inductive method, which is trying to find the rules, values, and legal norms contained in the library, which is discussed after that. Last, based on the results of these discussions the conclusions were drawn as answers to the problems studied.

Results and Discussion

The appointment of Police Commissioner-General M. Iriawan as an Acting Governor of West Java is based on his previous position as the Main Secretary of The National Defense Agency. The position is included in the scope of senior leadership positions of the State Civil Apparatus as stated in the law of the State Civil Apparatus. However, while serving as Main Secretary of the National Defense

Agency, Commissioner General of Police, M. Iriawan was still counted as an active member of the police force and not a civilian apparatus.

The existence of TNI/ Polri members in filling certain civil service positions has been regulating in the Provision or Article 20 paragraph (3) of law number 5 of 2014 concerning State Civil Apparatus (ASN). The provisions state that: Filling out certain ASN positions originating from Indonesian National Army Soldiers and members of the Indonesian National Police as referred to in paragraph (2) shall be carried out at the central agency as stipulated in the law on the Indonesian national armed forces and the law on the Indonesian national police.

Furthermore, according to the provisions of Article 109 Paragraph (3) of Law Number 5 of 2014 concerning State Civil Apparatuses, it is emphasized that the positions of High Leadership within certain Government Agencies may be filled by soldiers of the Indonesian National Police by competence based on statutory provisions. It's explained that the meaning of "Certain Government Agencies" was as stated in the Laws and Regulations governing the Indonesian national Army and the Indonesian National Police. The high leadership positions in the government agencies mentioned above were filled through the assignment and appointment of the President, Commander of the Indonesia National Armed Forces, or Head of the Indonesian National Police.

The filling position of the state civil apparatus by TNI Soldier and members of the National Police elaborated through the provisions of Article 109 Paragraph (2) and Paragraph (3) of Law Number 5 of 2014 concerning State Civil Apparatus. The provisions are as follow Article 109 Paragraph (2): High leadership positions may be filled by soldiers of the Indonesian National Army and members of the Indonesian National Police after resigning from active service if necessary and by competencies established through an open and competitive process; Paragraph (3): High positions offices within certain Government Agencies may be filled by soldiers of the Indonesian National Army and members of the Indonesian National Police by competencies based on statutory provisions. What is meant by "certain government agencies" in Article 109 Paragraph (3) is as stated in the Laws and Regulations governing the Indonesian National Army and The Indonesian National Police? The high leadership positions in the Government Agencies mentioned above were filled through the assignment and appointment of the President, Commander of the Indonesian National Armed Forces, or Head of The Indonesian National Police.

Provisions relating to certain ASN positions that can be filled out by Indonesian National Army soldiers and members of the Indonesian National Police are then listed in Government Regulation No. 11 of 2017 concerning Management of Civil Servants (Republic of Indonesia Government Regulation Number 11 of 2017 Regarding Management of Civil Servants, 2017) stating that "certain ASN positions within certain Central Institution circles may be filled by Army soldiers Indonesian National and members of the Indonesian National Police by competence based on statutory provisions ". In the explanation of the provisions, it was later emphasized that: "What is meant by" soldiers of the Indonesian National Army and members of the Indonesian National Police "are soldiers or members in active service". Then what is meant by certain ASN positions within the scope of certain central agencies that can be occupied by active high-ranking TNI / Police officers? Government Regulation Number 11 of 2017 Regarding Management of Civil Servants has not provided detailed answers regarding certain ASN positions within the scope of certain central agencies which can be occupied by active senior officers of the TNI / Police. The provisions of Article 149 Government Regulation Number 11 the Year 2017 Regarding Management of Civil Servants only states that: "Position Name, Position Competency and Requirements for ASN Position at the Central Institution as referred to in Article 147, and Article 148 is determined by PPK with the Minister's approval". Meanwhile, in article 158 the same provisions also state that: "Position Name, Position Competency, and requirements for ASN Position at the Central Institution as referred to in Article 149 must have been determined by PPK no later than 2 (two) years from the enactment of this Government Regulation".

If referring to the Law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia, there are no clear provisions relating to certain positions of the state civil apparatus that can be filled by members of the police who are active in service. However, Article 28 Paragraph (3) of this provision has expressly stated that: "Members of the Indonesian National Police can occupy positions outside the police force after resigning or retiring from the police service". In explaining the provisions it was later emphasized that: what is meant by "office outside the police" is a position that has no connection with the police or is not based on the assignment of the National Police Chief. Based on this, it is seen that members of the police who are active in service are not permitted to occupy "positions outside the police (including civilian positions not related to the police)" and if needed, the police officer must first resign or retire from police service. Also, members of the police who are in active service can only occupy positions in agencies that have duties and functions related to the duties and functions of the police and must be based on orders or assignments from the National Police as the highest leadership of the police.

On the other hand, if we review the position, duties, and functions of the National Defense Agency of the Republic of Indonesia as stated in Article 1 Paragraph (1) of Presidential Regulation Number 98 About the National Defense Institution of the Republic of Indonesia, are: below and is responsible to the President through ministers who coordinate, synchronize and control the affairs of the Ministry in the administration of government in the political, legal and security fields". Through these provisions, it appears that the duties and functions of the National Defense Agency are in line with and related to the duties and functions of the National Police of the Republic of Indonesia as stated in Article 2 of the Law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia which reads: "The function of the police is one of the function of the government of the state in the field of maintaining security and public order, law enforcement, protection, and service to the community ". Therefore, Police Commissioner-General M. Iriawan can occupy the position of Chief Secretary of the National Defense Agency without having to resign from the active police service.

Therefore, because it is still considered an active member of the police force, the appointment of Police Commissioner-General M. Iriawan as Acting Governor of West Java based on his previous position as Chief Secretary of the National Defense Institute has given rise to "legal uncertainty" over the provisions of Article 201 Paragraph (10) Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. According to Maria Sumardjono (2006), in developing the law it is not a simple job because a good law must meet the requirements of justice, legal certainty, and benefits in a balanced manner. (Law of Republic Indonesia Number 5 of 2014 concerning State Civil Apparatus, 2014) Certainty in the law is achieved if the law is as much as the law of the law and that in the law there are no conflicting provisions, the law is made based on *rechtswerkelijkheid* (legal reality) and in that law, there are no terms which can be interpreted differently. (Sumardjono, 2006).

The appointment of Police Commissioner-General M. Iriawan as an Acting Officer's Governor of West Java has injured the mandate of Law Number 2 of 2002 concerning the Indonesian National Police, Regional Government Law, and Law Number 5 of 2014 concerning State Civil Apparatus. Why?, because the position of "acting head of the region" is a civilian office outside the police force (a position that has nothing to do with the police or is not based on assignments from the National Police). Also, it needs to be re-examined that in the Indonesian constitutional system, the Police institution is not under the Ministry of Home Affairs and is not related to regional government affairs. Police organizations are bodies or institutions of government institutions that are part of government organizations so that members of the police are government officials who run police organizations by the duties and authority and objectives of the police institution. (Marzuki, 2008) The Ministry of Home Affairs and Regional Government are not included in certain government institutions whose main tasks and functions are in line with the main tasks and functions of the Police. Therefore, it would be very dangerous if the position of "Acting Regional Head" which is a civilian sphere is held by active high-ranking police

officers. Because basically, the duties and functions of the National Police are not only in the executive field in the framework of domestic security but also in part in the judicial field, namely in the field of law enforcement.

The National Police of Republic Indonesia about the government is one of the functions of the state government in the field of maintaining public order and security, law enforcement, protection and service to the community. (Santoso, 2017) In the provision of Article 28 Paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, it has been expressly stated that: "The National Police of the Republic of Indonesia is neutral in political life and does not involve themselves in practical political activities". This provision is in line with the mandate of reform which has explicitly limited the dual function and domination of the Armed Forces of the Republic Indonesia (Indonesian National Army / Police of the Republic of Indonesia) which was very strong in the new order period so that it would not rise again. The acting officer head of the region is a position that is in the civilian sphere, so it should be that senior police officers who will occupy this position should be preceded by the resignation from the active service so that the person concerned is freed and not bound by the police service. It aims to create a neutral Indonesian Republic Police Institution and stay awake from the shadow of the conflicting interests of the ruling elite. Also, the policy can avoid the potential for political upheaval during the holding of regional elections (Pilkada).

Conclusions

The appointment of high ranking officers of the Republic of Indonesia Police, which is equaled by the position of senior leadership of the central government as an acting officers (Pj) governor, is not in line with and contradictory to the provisions contained in Article 28 Paragraph (3) of the Republic of Indonesia Law Number 2 of 2002 concerning the Indonesian National Police, which expressly states that: "Members of the Indonesian National Police can occupy positions outside the police force after resigning or retiring from the police service". The appointment of high-ranking police officers as an acting officer's governors has caused "legal uncertainty" over the provisions of Article 201 Paragraph (10) of the Republic of Indonesia Law Number 10 of 2016 Regarding the Second Amendment to Law Number 1 of 2015 concerning Establishment of Government Regulations instead of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law.

Related to this, it is necessary to carry out a constitutional review of the provisions of Article 201 Paragraph (10) of the Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations instead of Law Number 1 of the Year 2014 Regarding the Election of Governors, Regents and Mayors Become Acts to the Constitutional Court as a judicial institution that has the authority to review the law. The test is intended to obtain legal certainty for the phrase "Middle-Senior Leadership Position" whether it also applies to high-ranking officers of the Indonesian National Army / Indonesian Republic Police who are being seconded to occupy structural positions of the state civil apparatus in certain government agencies so that they can be appointed as acting officers' governor. The position of "acting regional head" is a civilian position outside the police force (a position that has no connection with the police or is not based on an assignment from the National Police Chief), so that members of the National Police who occupy this position must resign or retire from the police service. It aims to restore the spirit of the Police Institution as a neutral law enforcement agency and free from all political interests of the ruling elite.

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