



The Authority of Regional Head Officials According to Law Number 10 Year 2016

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Abstract. This study aims to analyze two things. First, how the authority of the acting Regional Head according to Law No. 10 of 2016. Second, what are the legal implications of the authority of the acting Regional Head? The method used is legal research using primary and secondary legal materials and then analyzed prescriptively. The results of this study show two things: first, the authority of the acting Regional Head has not been regulated in full. Law No. 10 of 2016 only regulates the minimum requirements for the rank of acting Regional Head. Therefore, the authority of the acting Regional Head is the same as that of the Regional Head. However, there are restrictions on the authority of the Acting Regional Head because the mechanism for selecting regional heads is more democratic than acting Regional Head. Second, the legal implications of the acting authority are certainly not as strong as the authority of the Regional Head. Therefore, to ensure legal certainty from the acting Regional Head, the President should be able to issue regulations in the form of Government Regulations to regulate the authority of the acting Head Area.

Keywords: Authority · Law No.10 of 2016 · Acting Regional Head

1 Introduction

The General Election Commission (KPU) has set February 14, 2024, as the voting day for the simultaneous general election and November 27, 2024, as the voting day for the regional head election. However, the determination is not without problems from the legal aspect and its implementation. In the context of elections, the classic debate is related to regulating the threshold for submitting presidential candidates and vice presidential candidates, better known as the presidential threshold.

The regulation related to this PT invites debate because the PT arrangement is placed in a simultaneous election system, where the Presidential/Vice-Presidential Election and the Legislative General Election are conducted simultaneously. Logically, suppose the elections are held simultaneously. In that case, the parameters of the seats or legislative votes are impossible to determine because the legislative and general elections for President/Vice President are conducted simultaneously.

Regional heads, whether governors, regents or mayors. Article 201 paragraph (10) of the law states, “To fill the vacant position of the Governor, an acting Governor is appointed from the middle high leadership position until the inauguration of the Governor under the provisions of the legislation.” Meanwhile, Article 201 paragraph (11) states, “To fill the vacancy in the position of the Regent/Mayor, an acting Regent/Mayor is appointed from high-ranking Pratama positions up to the inauguration of the Regent and Mayor under the provisions of the legislation.

Article 222 of Law no. 7 of 2017, which regulates this PT, has been submitted for Judicial Review several times to the Constitutional Court. However, all of them are rejected and cannot be accepted. Simultaneous regional head elections also reap problems such as simultaneous general elections, although with different problems. The problem of simultaneous regional head elections arises when many regional heads must finish their terms in 2022 and 2023, while simultaneous regional head elections will only be held in 2024. Thus, there will be a power vacuum at the regional level in the 2022–2024 period [1].

Law No. 10 of 2016 has provided a solution related to vacancies left by the arrangement regarding the appointment of acting regional heads invites polemics among experts. This polemic based on appointment of regional heads, which are considered contrary to the 1945 Constitution of the Republic of Indonesia. Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that “Governor, Regent, Mayor respectively as head of government areas are democratically elected.

Constitutionally, appointing an acting regional head to fill the position of regional head that the previous regional head has left is not a good solution because the appointment of the acting regional head does not go through a democratic process. By several parties, Article 201 of Law Number 10 of 2016 was tested by the Constitutional Court. The Constitutional Court rejected the petition entirely through the decision of Constitutional Court Number 15/PUU-XX/2022.

Another problem with filling out the acting Regional Head is related to the authority of the acting Regional Head. Law Number 10 of 2016 does not regulate the authority of the acting Regional Head. The laws and regulations governing the authority of the acting Regional Head are Government Regulation Number 49 of 2008 concerning the Third Amendment to Government Regulation 6 of 2005 concerning the Election, Ratification of Appointments, and Dismissal of Regional Heads and Deputy Regional Heads [2]. Article 132 A of Government Regulation Number 49 of 2008 states: Regulates the prohibition of temporary officials from taking actions that are not under articles 130 and 131 (4), but this can be excluded if approved by the Minister of Home Affairs.

Based on the provisions of Article 132 A, paragraphs (1) and (2) of Government Regulation Number 49 of 2008, the authority of the acting Regional Head is the authority of the Regional Head as regulated in Article 25 of Law Number 32 of 2004 minus the prohibition stipulated in Article 132A of the Government Regulation Number 49 of 2008. While in Article 25 of Law no. 32 of 2004 states the duties and authorities of regional heads.

Thus, the acting Regional Head’s authority based on Government Regulation 49 of 2008 is the same as that of the Regional Head but is limited by the prohibition stipulated in Article 132 A. authority of the acting Regional Head as regulated in Law Number

32 of 2004 in conjunction with Government Regulation Number 49 of 2008 cannot be used as the basis for the authority of the acting Regional Head as regulated in Article 201 of Law Number 10 of 2016. There are at least two reasons why the limitation on the control of the interim Regional Head as held in Government Regulation 49 of 2008 cannot be used as a reference for the acting Head.

First, Government Regulation Number 49 of 2008 hierarchically refers to Law Number 32 of 2004 as its legal basis. Second, Article 132 A of Government Regulation 49 of 2008 regulates the prohibition of acting regional heads in the context of filling vacancies in regional head positions due to resigning as regional Head to nominate/be nominated as regional head/deputy regional head. Meanwhile, the acting Regional Head, as regulated in Article 201 of Law number 10 of 2016, governs the filling of the Regional Head because the Regional Head has finished his term of office. From the above background, the problem formulation is as follows: What is the Authority of the Acting Regional Head according to Law Number 10 in 2016?

2 Research Methods

This study uses a type of legal research [3]. This type of research is normative research using a statutory approach and a conceptual approach, as well as a historical approach [4]. This study's types and sources of legal materials are primary legal materials consisting of the Constitution. The Republic of Indonesia of 1945 (UUD NRI 1945) and Law Number 32 of 2004 concerning Regional Government, Law Number 23 of 2014 concerning Regional Government.

Law Number 10 of 2016 concerning amendments to Law Number 1 of 2015 concerning the stipulation of Government Regulation instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into law and the decision of the Constitutional Court No. 15/PUU-XX/2022. Secondary legal material consists of literature related to the research discussion, whether in the form of journals or books that are relevant to this research [5]. Non-legal materials consist of sources from the internet that are relevant to this research. The technique of analyzing legal materials is done by using prescriptive analysis. Analytical prescriptive is used to analyze the problem by using legal interpretation, legal concepts, legal values, and legal norms [6].

3 Result and Discussion

In administrative law literature, several terms look the same but have different meanings [7]. Acting Officer, Daily Executor, Acting, and Temporary Acting. Often some parties use these terms carelessly without understanding the purpose of the terms used. The distinction between the four terms is essential so that the use of the four terms becomes clearer.

Acting Officer (PLT) is an official who occupies a temporary position because the definitive official who occupies that position is permanently absent. For example, in a university environment where a dean dies, the Chancellor appoints another official to occupy the position of Dean until someone replaces the close part definitively. Meanwhile, the Daily Executor (PLH) is almost similar to the Executing Task (PLT), but what

distinguishes it is if the Daily Executor (PLH) replaces a temporarily absent official, for example, sick or going on a pilgrimage [7].

Officers, namely temporary officials, where the appointed official is still one level below the position of the permanently absent official. Meanwhile, the interim official is appointed as a temporary office where the appointed official is still two levels below the appointed official. Has been permanently absent [1]. Even though there are differences between the four terms above, the four terms have one thing in common: Acting Tasks, Daily Executors, Acting, and Acting are designed to hold positions for a while.

The choice of the term acting regional head as regulated in Article 201 of Law Number 10 of 2016 certainly has legal consequences. The birth of the concept of an acting Regional Head to anticipate a legal vacuum as a consequence of holding simultaneous Regional Head elections in 2024. The appointment of the acting Regional Head is not a problem when the period between the appointment of the acting Regional Head and the inauguration of the elected Regional Head is not so long. Problems arise when the time between the appointment of the acting Regional Head and the inauguration of the elected Regional Head is more than one year [2].

Officials of Regional Heads become a problem when they are measured juristically based on Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. When viewed in Article 201 of Law Number 10 of 2016, the mechanism is very different from the mechanism regulated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Article 18 paragraph (4) of the Constitution uses a democratic election mechanism. The democratic election mechanism can be carried out through two events: directly elected by the people and Regional People's Representative Assembly.

The mechanism for selecting Regional Heads can be done through direct elections and elections by the Regional People's Representative Council because the election of Regional Heads is constitutionally not included in the general election regime [8]. The election of the Regional Head and the general election are regulated in different Articles and Chapters. Regional head elections are regulated in Article 18 Chapter VI, while general elections are regulated in Article 22 E Chapter VIIB of the 1945 Constitution of the Republic of Indonesia.

Suppose the election of regional heads is included in the general election regime [9]. In that case, there is only one mechanism that can be used to elect regional heads, namely being elected directly by the people. However, although it is possible to be elected through the Regional People's Representative Council, this is still a reasonably strict constitutional limitation. Means that legislators cannot regulate other than the two mechanisms above [10]. Ironically, the Constitutional Court upheld Article 201 of Law Number 10 of 2016 by rejecting the petition of the applicant who disputed Article 201 because the article contradicted the Constitution. The Constitutional Court stated that the appointment of the acting Regional Head was in line with the principle of popular sovereignty.

In the decision of the Constitutional Court No. 15/PUU-XX/2022, the Court stated that it should be considered to issue an Implementing Regulation so that it is measurable and transparent that the filling of this Regional Head does not ignore democratic principles. Therefore, although the debate on the mechanism for the appointment of regional

heads has ended with the issuance of this Constitutional Court decision, theoretically, the issue of the appointment of acting regional heads can still be debated.

The issue of the mechanism for appointing the acting Regional Head has a moderately severe impact not only in the context of democracy but also has an impact on the authority of the acting Regional Head. There is a significant difference between the authority of the acting Regional Head and the Regional Head if the regional head election mechanism is not following democratic principles. Appointment. Acting Regional Head in a democratic manner cannot only be interpreted as the Government only announcing the names of the candidates for Acting Regional Head to the public to get input from the public.

Article 201 paragraph (9) of Law Number 10 of 2016 states, "To fill the vacant positions of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor whose term of office ends in 2022 as referred to in paragraph (3) and whose term ends in 2022. Term of office in 2023 as referred to in paragraph (5), the acting governor, acting regent, and mayor are appointed until the election of the governor and deputy governor, regent and deputy regent, as well as mayor and deputy mayor through national simultaneous elections in 2024." Meanwhile, paragraph (11) states that to fill the vacant position of the Regent/Mayor, an acting Regent/Mayor shall be appointed from high-ranking Pratama positions up to the inauguration of the Regent and Mayor by the provisions of the legislation. The phrase used in Article 201 paragraphs (9) and (11) is the phrase of appointment, not an election, so it has a different juridical meaning.

The authority of the acting Regional Head who fills his position through the appointment process and the authority of the Regional Head who fills his position through the election process will be different. The difference in authority between the acting Regional Head and Regional Head must be seen from the aspect of the source of authority or the method of obtaining authority. In administrative law theory, there are three ways to obtain authority: attribution, delegation, and mandate.

Indroharto, as quoted by Ridwan [2], said that attribution is the granting of new authority by providing a statutory regulation. Therefore, the source of direct attribution authority comes from the laws and regulations. An example of attribution authority is Article 20, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states, "The House of Representatives has the power to make laws." Thus, the authority of the House of Representatives in forming laws is directly sourced from the Constitution.

In contrast to attribution, the notion of delegation and mandate is not an original authority or authority that is directly sourced from laws and regulations but an authority whose acquisition is based on delegation. Delegation is the transfer of authority to other parties, and the responsibility lies with the recipient of the delegation. Meanwhile, the mandate is the transfer of authority to others, but the responsibility lies with the giver of the mandate. The elements of the delegation are as follows:

1. Delegation must be definitive, meaning that the delegates can no longer use the authority that has been delegated themselves;
2. Delegation is only based on statutory regulations, meaning that delegation is only possible if there are provisions for it in the laws and regulations;

3. Delegation is not directly to subordinates, meaning that concerning the hierarchy of personnel, delegation is not allowed;
4. Obligation to provide information, meaning that the delegates are authorized to ask for an explanation regarding the implementation;
5. Policy regulations (beliefs-regels), meaning that delegates give instructions on using that authority [3].

The elements of the mandate are as follows:

1. The authorized official only gives the mandate;
2. The mandate does not bring consequences for the recipient of the mandate (mandatory), who is responsible to third parties but may be required to provide a report on the exercise of the mandate-giving power. The responsibility of the third party concerning the mandated duties remains with a power of attorney (mandate);
3. Administrative, technical consequences, a power of attorney must act on behalf of a power of attorney (mandate). While a delegate and attribution holder can act independently;
4. The power of attorney may delegate power to third parties only with the permission of a power of attorney.

4 Conclusion

There is a relationship between the mechanism for selecting regional heads and their authority. If the Regional Head is democratically elected, especially directly elected by the people, then the authority of the Regional Head is attributive. However, if the mechanism is through appointment by a superior official, even through an open selection, then the authority is delegation. According to Article 201, paragraphs (9) and (10) fill their positions through an appointment mechanism, so the authority should be delegated. Therefore, Regional Head can be evaluated at any time, and if, according to his superiors, his performance is not good, his superior can replace him with a new official.

Regional Heads serve a relatively long time, about one to two years. Therefore, it is ironic if the acting Regional Head has the same authority as the democratically elected Regional Head. Law Number 23 of 2014 is indeed more centralized than the previous law. Reasonable, considering that Indonesia is a Unitary State the Central Government can intervene in the regions within the framework of the Unitary State of the Republic of Indonesia. However, the central government's intervention in these regions should not conflict with the essence of regional autonomy. The essence of regional autonomy is in line with the choice of the mechanism for the democratic election of regional heads. If the Regional Head is elected directly, then he has political legitimacy compared to the appointment mechanism, which will impact his authority.

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