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Filling the position of regional head executive task in the regional government system in Indonesia

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Abstract. This type of research is normative juridical research. Based on the results of the research above, it can be concluded that between the appointment of the regional head of the regional head acting acting official and the appointment of the regional head in filling the vacant position of the regional head as follows: (1) If a vacancy occurs because the regional head has entered the At the end of the term of office, the Minister of Home Affairs appoints "Acting" through a Decree of the Minister of Home Affairs and is inaugurated by the Minister of Home Affairs.

Keywords. regional head; system; normative

Introduction

The filling of the regional head's acting position certainly cannot be separated from the issue of simultaneous general elections which has an impact on the thinking of simultaneous regional head elections. However, because legal norms have provided a limitation that the election of regional heads is not an electoral regime, the regional head election is a separate election regime, and finally the simultaneous regional head elections have been held since 2015, namely: the election of the Governor and the Regent/Mayor. According to Arrsa, the constitutional design of the simultaneous general election as intended was born as an effort to shift the direction of the democratic transition towards strengthening the democratic consolidation system so that the opaque practices of direct democracy which tend to be transactional, corrupt, manipulative, have high costs and perpetuate power can be minimized in the practice of state administration which has dimensions of understand democracy and people's sovereignty.(Arrsa 2016)

One of the objectives of holding simultaneous regional head elections is for budget efficiency.(Indara 2018) However, the simultaneous regional head election raises pros and cons in society, because it is suspected that there will be several regions that will be led by the acting regional head who replaces the definitive regional head whose term of office expires before the simultaneous regional head election begins. At that time, based on data from the Ministry of Home Affairs, the simultaneous regional head elections on 9 December 2015 resulted in the vacancy of 66 regional head positions, namely: 7 Governors and 59 Regents/Mayors whose terms of office expired before the regional head elections were held. Appointment of regional

heads in several regions to replace the definitive regional heads so that government tasks don't stagnate.

Democratic regional head elections are intended to elect regional heads at the provincial and district/city levels. (Anon 2019) The meaning of the election of regional heads at the provincial and regency/municipal levels is the same as the election of the president and vice president, namely: (1) direct elections by the people (2) election by Regional People's Representative Assembly. From the election model, both of them show that they are democratic, but they are far more democratic, elected by the people. Direct regional head elections can be said to be one of the real forms of implementing regional autonomy, where the people can directly elect the leaders they want directly. Therefore, the idea of having regional heads elected by the Regional People's Representative Assembly is a step backwards for democracy and turning the clock back on what has been going on.

When there is a vacancy in the office of the regional head in the region due to the term of office of the regional head ending and/or due to being temporarily dismissed or on leave outside of the state's responsibility, then a regional head is appointed or appointed to run the wheels of government in the region with the limits of his authority regulated in the applicable laws and regulations.

Research Method

This type of research is normative juridical research. (Michael 2019)

Research result

Legal Basis for Appointment of Regional Heads (Plt)

Juridical filling of government positions has been regulated in several laws and regulations in Indonesia. Some of the laws and regulations governing the Implementing Tasks (Plt) in this case are contained in various provisions, namely: in Law Number 23 of 2004 concerning Regional Government in Article 65 paragraph (4) which states that "in the case of regional heads undergoing period of detention as referred to in paragraph (3) or temporarily absent, the deputy regional head carries out the duties of the regional head. Furthermore, in Government Regulation Number 49 of 2008 concerning the Third Amendment to Government Regulation Number 06 of 2005, namely Article 131 paragraph (1) which states that "if the regional head is dismissed based on a court decision that has permanent legal force as referred to in Article 125 paragraph (2), Article 127 paragraph (2), and Article 128 paragraph (7), the position of the regional head is replaced by the deputy regional head until the end of his term of office and the implementation process is carried out based on the decision of the Regional People's Representative Assembly plenary meeting and ratified by the President. Furthermore, Article 132A paragraph (1) affirms "the acting regional head or implementing the duties of the regional head as referred to in Article 130 paragraph (1) and paragraph (3), as well as Article 131 paragraph (4), or who is appointed to fill the vacant position of the head of state region because he resigned to nominate/be nominated as a candidate for regional head/deputy regional head, as well as regional heads who were appointed from deputy regional heads who replaced regional heads who resigned to nominate/nominated as candidates for regional heads/deputy regional heads".

Furthermore, in Article 7 paragraph (2) letter b of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 74 of 2016 concerning Leave outside the State Dependent for the Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor as amended by Regulation of the Minister of Home Affairs The State of the Republic of Indonesia Number 1 of 2018 concerning Amendments to the Regulation

of the Minister of Home Affairs of the Republic of Indonesia Number 74 of 2016 concerning Leave outside the State Dependent for Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors determines the existence of daily implementers. Article 2 Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 74 of 2016 concerning Leave outside the State for the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor determines that the Governor and Deputy Governor, Regent and Deputy Regent, Mayor and Deputy Mayor, who re-nominates in the same area, during the campaign period must take leave outside the state's responsibility, so he is temporarily absent.

System for Appointment of Regional Heads (Plt)

The implementation of regional government in a unitary state with a decentralized system cannot be separated from the concept of autonomy. (Susila Wibawa 2019) This is because decentralization is not just a distribution of authority (*spreiding van bevoegheid*) but also includes a division of power (*scheiding van machten*) to regulate and manage the administration of state government between the central government and lower government units (local governments). Because decentralization is always related to independent or autonomous status, every study of decentralization is always equated or by itself means talking about autonomy. (Bagir Manan 2000)

The vacant position of the regional head caused by the absence of office holders who carry out the duties and authorities results in the disruption of the implementation of the duties and authorities of the regional head, so that the implementation of regional government is disrupted, and doesn't run effectively in accordance with its objectives. Therefore, it's necessary to fill positions.

Appointment of interim acting regional head that occurs due to re-nomination as regional head (Malik et al. 2020) (*incumbent*) for the second period concerned must take leave, or appointment of acting regional head because the definitive regional head is temporarily dismissed or on leave outside the country state responsibility. Appointment of interim acting officials regional heads or appointments regional heads so that government duties and services to the community are not disrupted and theoretically there shouldn't be a vacancy in leadership positions.

Based on Law Number 5 of 2014 concerning State Civil Apparatus, among others, it's stated that "Filling in the Main and Middle High Leadership Positions in ministries, non-ministerial government agencies, secretariats of state institutions, non-structural institutions, and Regional Agencies is carried out openly and competitively among State Civil Apparatus by taking into account the requirements for competence, qualifications, rank, education and training, track record of position, and integrity and other requirements required in accordance with the provisions of laws and regulations and carried out at the national level.

In Article 86 paragraph (5) of Law Number 23 of 2014 concerning Regional Government, it is stated that "if the regional head and/or deputy regional head are temporarily dismissed as referred to in Article 83 paragraph (1) of Law Number 23 of 2014, The President determines the acting governor at the suggestion of the Minister and the Minister appoints the acting regent/mayor at the proposal of the governor as a representative of the Central Government until a court decision has permanent legal force. While the provisions regarding the requirements and terms of office of the Governor and Regent/Mayor are regulated in a government regulation.

The filling of state positions (*staatsorganen, staatsambten*) is one of the important elements in constitutional law. (Refina Mirza Devianti n.d.) Without being filled with officials

(*ambtsdrager*), it is impossible for the state's functions to be carried out properly (Bagir Manan, 2006). Therefore, the position of regional head may not be vacant even for a very short time, because the regional head is an element of the regional administration that leads the implementation of government affairs which are the authority of the autonomous region, so that when the regional head is unable to do so, the deputy regional head is appointed as the executor of the task (Plt) regional head.

This provides an understanding that the division of power or government authority (Gordon, Huberfeld, and Jones 2020) is based on two main principles: namely: (1) the absolute authority or power of government is not delegated to the regions because its related to the interests of the nation's life (2) no government authority or power is delegated one hundred percent or completely to the regions, except for government authorities concerning the interests of the local community.

If pay attention to the vacancy in the positions of regional heads, both governors, regents, and mayors in the regional government system in Indonesia based on Article 86 paragraph (5) of Law Number 23 of 2014, the filling of the acting governor is determined by the President at the suggestion of the Minister and the filling of the acting regent is determined by the Minister on the recommendation of the Governor as the representative of the central government.

If examined from the theory of authority in the case of "appointment of the Acting Regent of Pamekasan", the authority possessed by Fattah Jasin by the Minister of Home Affairs through the Decree of the Minister of Home Affairs Number: 131.35-1690 of 2018 was delegated with mandated authority. This gives an indication that after the Decree of the Minister of Home Affairs Number: 131.35-1690 of 2018 concerning the Appointment of the Acting Regent of Pamekasan, East Java Province, dated May 18, 2018, according to the second dictum, Fattah Jasin carried out additional duties from the start as Assistant for Economics and Development by the Pratama High Leadership position, then at the same time carry out the duties and authorities of the Pamekasan Regent which in the legal language is called the Acting Regent of Pamekasan, so that all government obligations and responsibilities in administering regional government in Pamekasan Regency and all actions must be accounted for as Acting Regent. Therefore, the meaning of "administering government in Pamekasan Regency" means that the duties and authorities of the Regent and Deputy Regent are limited in accordance with the third dictum of the Decree of the Minister of Home Affairs Number: 131.35-1690 of 2018 that, "The acting Regent as referred to in the first dictum is prohibited from replacing officials, except after obtaining written approval from the Minister of Home Affairs". This means that the duties and authorities of Fattah Jasin as "Acting Regent of Pamekasan" are not as broad as the scope of the powers and duties of the Deputy Regent of Pamekasan Halil who is appointed as the Executing Task (Plt) of the definitive regional head in administering the government in the Pamekasan Regency area as regulated in Article 65 of Law No. 23 of 2014 concerning Regional Government.

Requirements and Qualifications of Officials appointed as Acting Regional Heads

The filling of state positions (*staatsorganen, staatsambten*) (Lee 2020) is one of the important elements in constitutional law. Without being filled with officials (*ambtsdrager*), it is impossible for the functions of state positions to be carried out properly. The filling of positions is not only done once but is carried out regularly every five-year period to elect regional leadership officials to support the functioning of the government.

The appointment of the state civil apparatus (Said 2016) who will become the acting regional head to fill the vacant position of the head/deputy regional head shouldn't be at the

discretion of the appointing official, this is intended because it has qualified competence in the field of government management, and has political understanding in the area to be occupied as substitutes for governors and deputy governors, regents and deputy regents, as well as mayors and deputy mayors whose terms of office have expired. The officers are filled by state civil apparatus who occupy middle high leadership positions, both at the central and provincial government levels. This problem is not easy, it requires careful preparation for the government to prepare the condition of state civil apparatus capacity that has fulfilled the requirements to become acting regional heads.

The appointment of the acting regional head was held because there was a vacancy in the regional head position in the regional government. This vacancy occurs due to many things, but what often happens is cases of corruption and the nomination of regional heads in regional head elections. One of the objectives of conducting regional head elections is to elect democratically elected regional head candidates. In the event of a vacancy, a temporary acting executive of the definitive regional head is appointed, this is intended to carry out the duties of the definitive regional head so that the wheels of government continue to run as they should.

Conclusion

Based on the results of the research above, it can be concluded that between the appointment of the regional head of the regional head acting acting official and the appointment of the regional head in filling the vacant position of the regional head as follows: (1) If a vacancy occurs because the regional head has entered the At the end of the term of office, the Minister of Home Affairs appoints "Acting" through a Decree of the Minister of Home Affairs and is inaugurated by the Minister of Home Affairs. "Acting" uses the term "appointed,". (2) If the regional head is on leave outside of the state's responsibility, for example running as an incumbent in the regional head election or is temporarily absent such as being involved in an alleged legal case or dealing with the law, an "executive task" is assigned, in other words Plt. The Minister of Home Affairs assigns a regional head's acting by appointing his deputy. However, if the deputy also nominates himself, the Minister of Home Affairs appoints echelon I of the Ministry of Home Affairs or other Echelon I outside the Ministry of Home Affairs as acting governors and "pointing". The two terms have different legal consequences which are regulated in the Minister of Home Affairs Regulation.

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