


The Authority of the Acting Regent in the Process of Mutation of Acting Primary High Leaders

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Abstract

Introduction: The Acting Regent and Acting Mayor in carrying out their duties obtain permission from the Minister of Home Affairs to carry out Mutation and Rotation of Civil Servants for Primary High Leadership Positions and for Administrator Officials, the main thing that is considered and the reason for the Acting Regent to carry out mutations and rotations according to him, is so that the implementation of local government can run more effectively, but this policy reaps many pros and cons.

Purposes of the Research: This research aims to determine the legal regulations regarding the authority of the Acting Regent in the process of transferring Primary High Leadership officials in West Seram Regency, and the legal consequences if the mutation process of Primary High Leadership Officials is not in accordance with the process and authority stipulated in the regulatory provisions legislation.

Methods of the Research: This research aims to determine the legal regulations regarding the authority of the Acting Regent in the process of transferring Primary High Leadership officials in West Seram Regency, and the legal consequences if the mutation process of Primary High Leadership Officials is not in accordance with the process and authority stipulated in the regulatory provisions legislation.

Results Main Findings of the Research: The authority of the Regional Government in appointing Primary High Leadership Positions is regulated by Law Number 23/2014. Meanwhile, the prohibition on Acting Regional Heads from transferring employees is regulated in Law Number 5 of 2014 concerning State Civil Apparatus, Article 130A, Article 130, so that Regent Officials in making employee transfer decisions have legal consequences. Furthermore, the legal consequences of the policy of the Acting Regent of West Seram Regency in carrying out employee transfers are inappropriate.

Keywords: Authority; Mutation; Acting Regent.

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INTRODUCTION

Indonesia as a country has a Constitution as the basis of the state, namely the Constitution of the Republic of Indonesia in 1945. The 1945 Law of the Republic of Indonesia is a strong foundation for organizing autonomy by giving broad authority to the regions. The term authority in various literature is often equated with the terms power and authority, and power is often interchangeable with the term authority, and vice versa. In fact, authority is often equated with authority. Power is usually a relationship in the sense that there is one party who rules and the other party who is ruled (*the rule and the ruled*).¹ According to Ateng Syafrudin, there is a difference between the definition of authority and authority. Authority

¹ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, (Jakarta: Gramedia Pustaka Utama, 1998), p. 35-36

(authority, gezag) is what is called formal power, the power derived from the power conferred by law, whereas authority (*competence, bevoegheid*) is only about a certain "onderdeel" (part) of authority, in which there are authorities (*rechtsbevoegdheden*).² The government authority given to the regions is an effort to encourage community empowerment, the growth of aspirations and creativity, and the increase in local community participation in the implementation of local government. The rise of decentralization accompanied by regional autonomy and local democracy has not only promised new hope for society, but has also brought about prominent changes in the context of people-government relations or between the State and society.³

The division of authority in government affairs follows the concept of *residual functions* that are handed over to the city or district areas, while government affairs at the central and provincial levels are clearly and specifically determined. Given that the scope of the remaining affairs handed over to the city or district is very broad, this gives the impression that the city or district refers to the principle of general *competence* while its limited autonomy (*ultra vires*) is at the provincial level.⁴ Therefore, the definition of regional autonomy is interpreted as the authority of autonomous regions to regulate and manage the interests of the local community according to their own initiative based on the aspirations of the community in accordance with laws and regulations. Since the issuance of Law Number 1 of 1945 as a normative foundation that regulates the system of government administration in the regions which continues to change in a certain period of time, the last with the issuance of Law Number 23 of 2014 concerning Regional Government as a result of the influence of government politics, which gives its own dynamics in the pattern of activities, power patterns, and leadership behavior patterns of regional heads. As a normative provision for the implementation of the local government system, the provisions of this law and regulations have regulated the positions, duties, functions, obligations, and requirements of regional heads.⁵

Seram Regency, Western Maluku Province, is one of the autonomous regions in Indonesia that is given the authority to regulate and manage the interests of the local community according to its own initiative based on the aspirations of the community, currently led by an Active Indonesian National Army Member from the National Intelligence Agency (hereinafter abbreviated as KABINDA) appointed by the Minister of Home Affairs to carry out his duties as Acting Regent to fill the vacancy because the term of office has expired on May 22, 2022. In accordance with the Decree of the Minister of Home Affairs Number: 131.81 – 1164 of 2022 concerning the Appointment of the Acting Regent of Seram Western Maluku Province for one government period of 1 (year) and then extended again for the next periodization based on the Decree of the Minister of Home Affairs Number: 100.2.1.3-1224 of 2023 concerning the Extension of the Term of Office of the Acting Regent of Seram Western Maluku Province.

Carrying out the duties and authorities of government administration in Western Seram Regency The Acting Regent is guided by the Regulation of the Minister of Home Affairs

² Ateng Syafrudin, "Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung Jawab", *Jurnal Pro Justisia* 18, no. 1 (2000): p. 22.

³ Andress Denny Bakarbesy "Otonomi Daerah, Primordialisme dan Sumber Daya Manusia" *SASI* 18, no. 1, (2012): 40-48. doi: <https://doi.org/10.47268/sasi.v18i1.335>

⁴ Hariyanto, "Hubungan Kewenangan antara Pemerintah Pusat dan Pemerintah Daerah Berdasarkan Negara Kesatuan Republik Indonesia" *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 3, no. 2 (2020): 99-115.

⁵ J Kaloh, *Kepemimpinan Kepala Daerah, Pola Kegiatan, Kekuasaan, dan Perilaku Kepala Daerah dalam Pelaksanaan Otonomi Daerah*, (Jakarta: Sinar Grafika, 2009). p. 4.

Number 4 of 2023 concerning Acting Governors, Acting Regents, and Acting Mayors, Article 15, in carrying out the duties of leading the administration of government in Western Seram Regency The Acting Regent by obtaining permission from the Minister of Home Affairs takes a policy to carry out Mutation and Rotation of the State Apparatus Civil Scope of the West Seram Regency Government for primary high leadership positions and for administrator officials, the main thing that is considered and the reason for the Acting Regent to carry out mutations and rotations according to him, is so that the implementation of local government can run more effectively and efficiently because primary high leadership officials and administrator officials who were previously inaugurated by the defensive Regent are not in accordance with their competence and have low performance.

The fight carried out has pros and cons because some people consider that the Acting Regent does not have full authority to replace Primary High Officials and Administrative Officials. As Article 1 number 5 of Law Number 30 of 2014 concerning Government Administration states that authority is the right owned by Government Agencies and/or Officials or other state administrators to make decisions and/or actions in the administration of government. Furthermore, Article 1 number 6 states that government authority, hereinafter referred to as authority, is the power of Government Agencies and/or Officials or other state administrators to act in the realm of public law. Article 8 of Law Number 30 of 2014 concerning Government Administration states that: 1) Every Decision and/or Action must be determined and/or carried out by the authorized Agency and/or Government Official; 2) Government Agencies and/or Officials in exercising their authority must be based on: a) laws and regulations; b) General Principles of Good Government.⁶

The acting regent is not a definitive position and is only an appointment from the central government so that it does not represent the representation of the people who vote directly, but there are some who argue that this policy is correct because it is in accordance with the procedures of the law and order and has received the approval of the Minister of Home Affairs as the mandate giver. Mandate is the delegation of authority from organs/agencies and/or government officials with higher positions to organs/agencies and/or government officials with lower positions (mandatory) with permanent responsibilities and responsibilities to the mandat-giver. Government organs/bodies and/or officials get a mandate if they are assigned by government organs/agencies or officials above them and as the executors of routine duties, organs/agencies and/or officials who carry out the routine duties mentioned above, namely the routine duties of definitive officials who are temporarily prevented from being carried out by the daily implementers. Organs/Agencies and/or government officials get a mandate when given tasks by the organs/agencies or government officials above them and as a permanent implementer, the executor of the permanent duties mentioned above is the definitive official who is unable to continue to be carried out by the daily executor who carries out permanent duties. Government agencies and/or officials are mandated when assigned by government organs/agencies or officials above them and are routine duties unless otherwise specified in the Laws and Regulations. The organ/agency and/or government official receiving the mandate must mention on behalf of the organ/agency and/or government official who gave the mandate. Authority that has been given through a mandate by the Organ/Agency and/or government officials

⁶ Ilona Miranda Tuhuleruw, Andress Deny Bakarbesy, and Merlien Irene Matitaputty. "Penyalagunaan Wewenang Kepala Desa Dalam Membuat Surat Keterangan Tanah." *TATOHI: Jurnal Ilmu Hukum* 3, no. 9 (2023): 917-923. doi: <https://doi.org/10.47268/tatohi.v3i9.1953>

that has been given can be used by itself unless otherwise specified in the Laws and Regulations.⁷

METHODS OF THE RESEARCH

The legal research method used by the author based on the problem being researched is a normative juridical research method, which is research that is focused on examining the application of rules or norms in positive law.⁸ Normative juridical is an approach that uses a *positivist conception of legis*. This concept views huk um as identical to written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and independent of the real life of society⁹, In a short definition, Normative Law Research or also known as literature law research is: "Legal research conducted by examining mere literature materials or secondary data".¹⁰ According to Piter Mahmud Marzuki, normative legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand. This research mainly examines positive legal provisions and legal principles that aim to find solutions to legal issues and problems that arise in them, so that the results that will be faced then are to provide a prescription for what exists for the issues proposed.¹¹

RESULTS AND DISCUSSION

A. The Authority of the Acting Regent in the Mutation of High Leadership Positions

The authority of the Regional Government in the appointment of Primary High Leadership Positions is closely related to the implementation of government by the Regional Government assisted by the Regional Apparatus. The appointment of officials in the position of High Leadership is regulated by Law Number 23/2014, the regulation of which is contained in Chapter VII concerning Regional Apparatus. Furthermore, the definition of the authority of High Leadership Positions is regulated in Articles 233 to 235 of Law Number 23/2014, in carrying out the mutation of structural positions within the Regency Government carried out more than 2 activities, this is due to filling vacant positions periodically or periodically there are officials who have retired/resigned and reduce stagnation, increase creativity and hopefully with placement Civil Servants in new positions add insight, increase the knowledge of officials which has an impact on improving the performance of the Regency Government. In addition, the filling of the Primary High Leadership Position must still be carried out in an open and competitive manner which refers to the provisions of Article 108 paragraph (30) and paragraph (4) of the State Civil Apparatus Law and the Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform Number 13 of 2014 concerning Procedures for Filling High Leadership Positions openly within Government Agencies.

In connection with the prohibition of Acting Regional Heads to carry out employee mutations in Article 130A, it can be explained among the 4 (four) prohibitions mentioned

⁷ Moh Gandara, Kewenangan Atribusi, Delegasi Dan Mandat, *Khazanah Hukum*, 2, no. 3 (2020): 92-99, DOI: <https://doi.org/10.15575/kh.v2i3.8187>

⁸ Johnny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif* (Malang: Malang: Bayu Media Publishing, 2006), p. 285.

⁹ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990), p. 13-14.

¹⁰ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta : Raja Grafindo Persada (Jakarta: Rajawali Pers, 2015), p. 13-14.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2016), <https://doi.org/340.072>. p. 35.

above, in this study it focuses more on the prohibition of employee mutations, Article 130 paragraph (1), paragraph (2) paragraph (3) and paragraph (4) of Law of the Republic of Indonesia Number 5 of 2014 concerning the State Civil Apparatus, then the criteria of the acting or acting regional head who are prohibited from mutating employees: 1) Acting regional head who comes from the deputy regional head because the regional head is temporarily dismissed (by the president for committing a criminal act that is threatened with a minimum of 5 years or committing criminal acts of corruption, terrorism and treason) until there is a court decision that has permanent legal force (Article 130 paragraph (1); 2) Acting regional head who is determined on the proposal of governor with the consideration of the Regional People's Representative Council because the regional head and deputy regional head are temporarily dismissed (by the president for committing a criminal act that is threatened with a minimum of 5 years or committing criminal acts of corruption, terrorism and treason) until there is a court decision that has permanent legal force (Article 130 paragraph (2); 3) Acting regional heads who come from the regional secretary because the regional head and deputy regional head are dismissed or dismissed simultaneously in their positions so that there is a vacancy of power that is not allowed to remain simultaneously (Article 130 paragraph (4); 4) Acting Regional Heads who are appointed to fill the vacancy of the position of regional head because the regional head resigns to nominate/be nominated as a candidate for regional head/deputy regional head (Article 130A paragraph (1); 5) Regional head appointed from the deputy regional head who replaces the regional head who resigns to nominate/be nominated as a candidate for regional head/deputy regional head (Article 132A paragraph (1).

Based on the criteria described, none of them are criteria for acting regional heads, because the Acting Regent of West Seram Regency was appointed due to the end of the term of office of the Regent and Deputy Regent of West Seram Regency while the Regent and Deputy Regent of West Seram Regency have not been elected/inaugurated. The promotion of positions in the government, especially the Primary High Leadership Position, is intended to foster the career of a Civil Servant. According to Sudibyo Triatmodjo, in a healthy career development system, there is always a close link between position and rank, meaning that a Civil Servant who is appointed to occupy a position must have the appropriate rank for that position. The procedure for filling positions in the primary high leadership should be carried out by the Personnel Supervisory Officer by first forming a Selection Committee. The selection committee has 3 (three) names of candidates for Primary High Leadership Officials for every 1 (one) vacancy. 3 (three) names of candidates for primary high leadership officials who were selected were submitted to the Personnel Development Officer through the Authorized Officer. The Personnel Supervisory Officer selects 1 (one) out of 3 (three) candidate names to be determined and inaugurated as Primary High Leadership Officials.

Furthermore, to the process of promotion of very strong legal positions as originally Law Number 43 of 1999 concerning Amendments to Law Number 8 of 1974 concerning Personnel Principles (Law Number 43/1999) which regulates the requirements for filling positions for Civil Servants, in Article 17 paragraph (2) of Law Number 43/1999. The appointment of Civil Servants in a position is carried out. Based on the principle of professionalism in accordance with the competencies, work achievements, and rank levels set for the position as well as other objective requirements without distinction between gender, ethnicity, religion, race or class.

In line with that, the Ministry of State Apparatus Empowerment and Bureaucratic Reform, has launched the *Bureaucratic Reform Grand Design* program which is emphasized by the 9 (Nine) action plans for the Acceleration of Bureaucratic Reform Program and one of them is the open Civil Servant promotion system program. This program aims to ensure the availability of structural officials who have the competencies of the position according to the competencies and requirements required by the position.¹² The filling of the Primary High Leadership Position is carried out openly and competitively among Civil Servants by paying attention to the requirements of competence, qualifications, rank, education and training, track record of positions, and integrity and other position requirements in accordance with the provisions of laws and regulations which are carried out openly and competitively at the national level or between districts/cities in 1 (one) Province. The management of Civil Servants in the regions is a unit of bureaucratic networks in the national personnel system, in the Civil Servant Management there is authority given to the Regional Government to appoint officials. Positions in local government are divided into functional positions and structural positions. When functional positions emphasize at the level of career or functional personnel, structural positions indicate the position, duties, responsibilities, authorities, and rights of a Civil Servant in order to lead an organizational unit.¹³

B. Legal Consequences of the Acting Regent in the Mutation of High Leadership Positions

Legal consequences are all consequences, consequences that occur from all legal acts carried out by the legal subject against the object of law or other consequences caused by certain events that by the law itself have been determined or considered as legal consequences, or the result of an action taken to obtain a result desired by the perpetrator and regulated by law. In short, legal consequences are consequences caused by legal events.¹⁴ Based on this explanation, it can be seen that legal consequences are all consequences that occur from all legal acts carried out by legal subjects against legal objects or other consequences caused by certain events by the law concerned have been determined or considered as legal consequences. In relation to the term legal consequence, it can be applied to legal actions or legal acts, both delinquency in the field of criminal law (criminal acts) and delinquencies in the field of private law (unlawful acts). There are three types of legal consequences, namely legal consequences in the form of the birth, change, or disappearance of a certain legal rule. Legal consequences in the form of the birth, change or disappearance of a certain legal relationship, and legal consequences in the form of sanctions, both criminal sanctions and sanctions in the field of civil law.¹⁵

As such, legal consequences can be in the form of legal actions or actions in the field of law, both legal rules, legal relations, and sanctions in the field of law. Therefore, to keep us from slipping into an act that can be categorized as against, violating and/or contrary to the law, at least we must know or know about the legal aspects and consequences of an act that we are going to do. Legal events are the various possibilities of relational acts and natural-nature events governed by the rule of law that give rise to certain legal consequences. Thus, legal events can be in the form of: a) Legal acts, namely an act whether done or not carried

¹² <http://rajawaligarudapancasila.blogspot.com/2014/05/memahami-merit-sistem-dalam-promosi.html>.

¹³ Nelson Bastian Nope, "Mutasi Pejabat Fungsional Ke Dalam Jabatan Struktural Di Era Otonomi Daerah", *Yustisia*, 4, no. 2 (2015): 349-368. DOI: <https://doi.org/10.20961/yustisia.v4i2.8654>

¹⁴ Muhamad Sadi Is, *Pengantar Ilmu Hukum*, (Jakarta: Kencana, 2015), p. 90.

¹⁵ Achmad Ali, *Menguak Tabir Hukum*, (Jakarta: Kencana, 2015), p. 275-276.

out which is regulated by the rule of law so as to cause legal consequences such as renting. Legal consequences of a consequence in the form of a lawsuit if the act or if not doing something happens really the consequences can be punished for the person concerned; b) Legal relationship, namely the relationship between the subject of the law and other legal subjects or the relationship between the subject of the law and its legal object which is regulated by the rule of law so as to give rise to legal consequences; c) Natural-natural occurrences, namely natural occurrences that are regulated by law.¹⁶

Based on the description of the legal consequences above, the policy of the Acting Regent of West Seram Bagaian Regency in carrying out employee mutations is inappropriate because the Acting Regent does not have the authority. The policy of the Acting Regent certainly has an impact or legal consequences in terms of the Decision. Based on the opinion of Prajudi Atmosudirdjo¹⁷ (in Jawade Hafidz arsyad), that the state administration should not refuse to make a decision just because there is no regulation. Prajudi Atmosudirdjo defines discretion as the freedom to act or take decisions from authorized and authorized state administrative officials according to their own opinions. Furthermore, Bachsan Mustafa's opinion stated that *freies ermesen* is given to the government considering the function of the government or state administration, which is to organize public welfare which is different from the judicial function to resolve disputes between populations.¹⁸ Government decisions prioritize the achievement of their goals or objectives (*doelmatigheid*) rather than in accordance with the applicable law (*rechtmatigheid*).

Based on the above opinion and associated with the policy of the Acting Regent in making a decision to mutate employees, it can be said that they do not meet the qualifications of what is called *freies ermesen* or discretion. This can be explained because: 1) The policy of the Acting Regent is not possible by law, because it has been expressly stated in Article 132A paragraph (1) letter a of Government Regulation Number 49 of 2008; 2) The policy of the Acting Regent to transfer employees is not an important and urgent issue that must be resolved immediately; 3) The policy of the Acting Regent to transfer employees cannot be accounted for either morally to God Almighty or legally. From the normative side, as stipulated in article 24 of Law Number 30 of 2014 concerning Government Administration, discretionary actions or policies may only be carried out if: a) in accordance with the purpose of Discretion; b). does not contradict the provisions of laws and regulations; c). in accordance with the General Principles of Good Government; d) based on objective reasons; e). does not give rise to a Conflict of Interest; and f). done in good faith.

Van der pot (in E. Utrecht) said that there must be 4 (four) conditions that must be met in order for a decision to be valid as a valid decision, namely: 1) The decision must be made by the instrument authorized to make it; 2) Since the decision is a declaration of will, the former of the will must not contain juridical deficiencies; 3) The decision shall be given the form stipulated in the regulation on which it is based and its actions shall also take into account the manner in which the decision is made, if that method is expressly stipulated in the basic regulation; 4) The content and purpose of the decision must be in accordance with the purpose of the basic regulations. In van der pot's opinion above, it is clear that the decision issued by the Acting Regent to transfer employees is invalid, because the elements or conditions to make a decision to be valid are not met. As stipulated in Law Number 30

¹⁶ Sri Warjiyati, *Memahami Dasar Ilmu Hukum: Konsep Dasar Ilmu Hukum*, (Jakarta: Prenadamedia Group, 2018), p. 68.

¹⁷ Jawade Hafidz Arsyad, *Korupsi dalam Perspektif HAN (Hukum Administrasi Negara)*, (Jakarta: Sinar Grafika, 2013), p. 72.

¹⁸ Bachsan Mustafa, *Pokok-pokok Hukum Administrasi Negara*, (Bandung: Citra Aditya Bakti, 1990), p. 55.

of 2014, especially in Article 52, 2 (two) conditions are specified that must be met in order for a decision to be declared valid. Article 52: (1) The conditions for the validity of the Decision include: a) determined by the authorized official; b) made in accordance with the procedure; and c) the substance that is in accordance with the object of the Decision. (2) The validity of the Decision as intended in paragraph (1) is based on the provisions of laws and regulations and the General Principles of Good Government.

Regarding the decision of the Acting Regent to transfer employees not based on the General Principles of Good Government because the Acting Regent's Decree can be qualified as violating the General Principles of Good Government as referred to in Article 10 paragraph (1) of Law Number 30 of 2014, of the 8 (eight) principles that are regulated, there are several principles that are clearly violated by the Acting Regent in issuing a Decision to mutate employees, namely: a) The principle of legal certainty is that the Acting Regent has no basis in laws and regulations and inappropriate, irregularity and injustice in the implementation of special regional government mutates employees; b) The principle of impartiality, namely the Acting Regent in mutating employees does not consider the interests of the parties as a whole and acts discriminatory; c) The principle of prudence, namely the Acting Regent in mutating employees is not based on complete information and documents to support the legality of the decision, so that the decision becomes imprudent. Therefore, the decision of the Acting Regent to carry out the mutation of employees legally has an inappropriate result. The legal consequence or consequences of the decision of the Acting Regent to carry out employee mutations is that it must be canceled, because there are defects in authority, procedures and/or substance. This is in line with what is regulated in Article 66 of Law Number 30 of 2014.

CONCLUSION

Mutation of structural positions within the West Seram Regency Government can basically be carried out more than 2 times, this is due to filling vacant positions periodically or periodically there are officials who have retired/resigned. In addition, it is also to reduce stagnation, increase creativity and hopefully with the placement of Civil Servants in new positions, increase insights, knowledge of officials increases which has an impact on improving the performance of the West Seram Regency Government. The policy of the Acting Regent of West Seram Bagaian Regency in carrying out employee mutations is invalid because the Acting Regent does not have the authority to do so. The policy of the Acting Regent certainly has an impact or legal consequences in terms of the Decision. If the policy of the Acting Regent outlined in the form of a decree is qualified as an act that does not have authority, then the legal consequences of the decision are certainly invalid.

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