

TEMPORARY DISMISSAL OF REGIONAL HEADS COMMITTING CORRUPTION CRIMES IN INDONESIA

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Abstract: *The process of dismissing Regional Heads and / or Vice Regional Heads without passing through the Regional Parliament proposal is regulated in Article 83 paragraph (1) of Act Number 23 of 2014 concerning Regional Government, namely Regional Heads and / or Vice Regional Heads being suspended temporarily without through the Regional Parliament proposal for being charged with a criminal offense threatened with imprisonment for at least 5 (five) years, corruption, terrorism, treason, criminal acts against state security, and / or other acts that can divide the Unitary Republic of the Republic Indonesia. In the implementation there are still regional heads who were not dismissed temporarily from their positions when they were accused in court. Temporary dismissal of the Regional Head based on Article 83 paragraph (1) of Act Number 23 of 2014 concerning Regional Government must be preceded by the status of a Regional Head who has been designated as a defendant in a criminal offense, then the process of temporary dismissal of the Regional Head must be based on the case register in the Court and authorized to dismiss the Regional Head who has been designated as the defendant is the President for the governor, and the Minister of Home Affairs for the regent or mayor without going through the proposal of the Regional Parliament. The legal consequence of the dismissal of the Regional Head whose status is the defendant is the duty, and the authority of the Regional Head is exercised by the Vice Regional Head until a court decision has obtained permanent legal force, but if the Regional Head who has been designated as a defendant in the criminal offense is not dismissed from his position then The President and Minister of Home Affairs may be deemed not compliant with the law and cause legal uncertainty in the bureaucracy in the administration of regional government in the area.*

Key Word: *Termination; Regional Head; Regional Government.*

1. INTRODUCTION :

The State of Indonesia in Article 18 of the Constitution of the Republic of Indonesia, explained that the territory of Indonesia is divided into provincial regions and provincial regions are divided into smaller regions. Each region is headed by a regional government head called the regional head. The regional head for the provincial area is called the governor, for the district area called the regent, and for the regional city called the mayor and the provisions regarding regional heads and deputy regional heads are regulated in Act Number 23 of 2014 concerning Regional Government. Substantially, the Law governs the form of arrangement of regional government administration. Nominally these laws have been able to keep abreast of changes in regional government according to their times.[1]

Act Number 23 of 2014 concerning Regional Government stipulates that the Regional Head is no longer accountable to the Regional Parliament but must provide a statement of accountability to the Regional Parliament. As a consequence, the Regional House of Representatives can no longer dismiss the regional head on the grounds that his accountability is rejected, instead the regional head is obliged to provide a report on the administration of regional government to the President. The position between the Regional Head and the Regional Parliament is balanced, one thing and another because the regional head is elected directly by the people and no longer by members of the Regional Parliament.

Dismissal of regional heads can be carried out at the initiative of the Regional Parliament, and some are not through the initiative of the Regional Parliament but directly carried out by the President for the Governor and / or Vice Governor, and carried out by the Minister of Home Affairs for the Regent and / or Vice Regent or Mayor City and / or Vice Mayor, through a court decision that has permanent legal force. The form of regional head dismissal is in the form of temporary dismissal and permanent dismissal.

Until now there have been several Regional Heads and / or Vice Regional Heads who have been temporarily dismissed from their positions when the Regional Head and / or Vice Regional Head has been designated as a defendant, including:

- Vice Mayor of Probolinggo HM Suhadak was suspended by the Minister of Home Affairs Tjahjo Kumolo on November 22, 2016 after being convicted of a 2009 Special Allocation Fund (DAK) corruption case.
- Minister of Home Affairs Tjahjo Kumolo also dismissed Ogan Ilir Regent Ahmad Wazir Nofiyadi Mawardi on Wednesday 30 November 2016 for his involvement in narcotics use after BNN named him a suspect.
- North Sumatra Governor Gatot Pujo Nugroho was temporarily dismissed due to a bribery case. The dismissal of Gatot as Governor of North Sumatra was carried out by the Minister of Home Affairs after the defendant underwent a first hearing on 23 December 2015.
- Bogor Regent Rachmat Yasin was also dismissed by the Minister of Home Affairs after being accused of a land swap case in Bogor.
- Ratu Atut Chosiyah was temporarily dismissed by the Minister of Home Affairs after becoming a defendant in the bribery case against the Chairman of the Constitutional Court (MK) Akil Mochtar in the amount of Rp1 billion with Wawan, related to the Election of Lebak, Banten.

The mechanism for the dismissal of Regional Heads and / or Vice Regional Heads without going through the Regional Parliament proposal is regulated in Article 83 paragraph (1) of Act Number 23 of 2014 concerning Regional Government, namely the Regional Head and / or Vice Regional Head being suspended temporarily without going through the Regional Parliament proposal because he was indicted committing criminal offenses threatened with imprisonment for at least 5 (five) years, criminal acts of corruption, criminal acts of terrorism, treason, criminal acts against state security, and / or other acts that can divide the Unitary State of the Republic of Indonesia. But, in practice there are still regional heads who were not temporarily dismissed from their positions when they were accused in court.

2. CONCEPTUAL FRAMEWORK:

a. Regional Government

Regional government in article 1 number 2 of Act Number 23 of 2014 concerning Regional Government is the implementation of government affairs by the regional government and regional people's representative councils according to the principle of autonomy and assistance tasks with the principle of broadest autonomy in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia.

b. Regional Heads

Regional head in Article 1 number 2 Government Regulation Number 6 of 2005 is the Regional Head and Vice Regional Head is the Governor and Vice Governor for the Province, the Regent and Vice Regent for the Regency, and the Mayor and Vice Mayor for the City.

c. Corruption

According to the Big Indonesian Dictionary, the notion of corruption is an act of misappropriation or misuse of state money (companies and so on) for personal or other people's benefit.

3. THEORETICAL FRAMEWORK:

a. Legal Certainty

According to Utrecht, legal certainty contains two meanings, namely, first, the existence of general rules that make individuals know what actions may or may not be done, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules that individuals can know what the state may charge or do to individuals.[2]

b. Authority

Authority is the right to use the authority possessed by an official or institution according to the applicable provisions, thus the authority also concerns the competence of legal actions that can be carried out according to formal rules, so the authority is a formal power owned by the official or institution. The authority has an important position in the study of Constitutional Law and State Administrative Law. Once the importance of this position of authority, so F.A.M. Stroink and J.G. Steenbeek called it a core concept in Constitutional Law and Administrative Law.[3]

c. Liability

• Administrative liability

Accountability within the scope of government organizations (state administration). Is an internal responsibility.

• Political Liability

Accountability relating to government policies. The substance is policy. This is usually conveyed by the government to parliament. This responsibility lies principally in the parliamentary system of government.

- Legal Liability

The substance of this responsibility is a violation of the law. The process is through an impeachment mechanism.

4. LITERATURE REVIEW:

The reasons for the regional head being dismissed in Article 78 paragraph (2) of Act Number 23 of 2014 concerning Regional Government include:

- a. The term of office has ended;
- b. Can not carry out tasks in a continuous or unable to remain in a row for 6 (six) months;
- c. Declared breach of oath / appointment of regional head / vice head of region;
- d. Does not carry out the obligations of regional head and deputy regional head as referred to in Article 67 letter b;
- e. Breaking the prohibition on regional heads and deputy regional heads as referred to in Article 76 paragraph (1), except for letter c, letter i, and letter j;
- f. Conducting a despicable act;
- g. Are given tasks in certain positions by the President that are prohibited from being concurrent with the provisions of the legislation;
- h. Using false documents and / or information as requirements at the time of nominating a regional head / vice regional head based on evidence from an institution authorized to issue documents;
- i. Get terminated sanctions.

Syed Hussein Alatas, revealed several characteristics of corruption, namely:[4]

- a. Corruption always involves one person
- b. Corruption in general involves secrecy, unless it is so rampant and profound.
- c. Corruption involves elements of obligation and mutual benefits.
- d. Those who practice corruption usually try to take cover behind legal justification.
- e. Those involved in corruption are those who want decisive decisions and they are able to influence those decisions.
- f. Every act of corruption contains fraud.
- g. Every form of corruption is a betrayal of trust.
- h. A form of corruption involves a contradictory dual function of those who carry out the action.
- i. An act of corruption violates the norms of duty and responsibility in the social fabric.

5. METHOD:

This research uses normative legal research. Normative legal research is library law research.[5] In this normative study, the approaches used are:

- a. Statutory Approach, is carried out by examining the statutory regulations from the highest norm to the lowest,
- b. Conceptual Approach, this approach moves from the views and doctrines that develop in the science of law.

6. DISCUSSION:

The principle of regional government implementation is the principle of autonomy which is the right, authority and obligation of the autonomous region to regulate and manage their own government affairs and community interests in accordance with the provisions of the regulations.[6] Juridically, the regional government is organized by the regional government led by the regional head and the Regional Parliament. The position of regional head can be understood as the position of head of local government in a unitary state, which is obtained as a consequence of the implementation of the principle of decentralization or the principle of deconcentration. The unitary state only knows one sovereignty, so regional relations with the center must be hierarchist. Which relationship also influences the position of regional head.[7]

The act expressly instructs the President and Minister of Home Affairs to dismiss the Regional Head and / or Vice Regional Head who is a defendant in a criminal offense threatened with imprisonment for a minimum of 5 (five) years, criminal acts of corruption, criminal acts of terrorism, treason, criminal acts against state security, and / or other acts that can divide the Unitary Republic of Indonesia, but if there is a Regional Head and / or Vice Regional Head who is charged and charged according to the article and the person concerned is not dismissed from his position, then in this

case the President and the Minister of Home Affairs can be considered not compliant with the order of the law which in this case is the order of Act Number 23 of 2014 concerning Regional Government. Related to the dismissal of the Regional Head and / or Vice Regional Head whose status is the defendant will also adversely affect the image of the President and the Minister of Home Affairs, because the law gives full command and authority to the President and the Minister of Home Affairs to dismiss the Regional Head and / or Vice Regional Head who the defendant's status.

If it does not meet the elements and is not dismissed the Regional Head who is a defendant but his indictment does not meet the elements of Article 83 paragraph (1) of Act Number 23 of 2014 concerning Regional Government, then the legal consequence is that the Regional Head may not be dismissed without going through the Regional Parliament proposal. Regional Head whose status is defendant but his indictment does not fulfill the elements of Article 83 paragraph (1) of Act Number 23 of 2014 concerning Regional Government and in fact the person concerned is serving a term of detention, then based on Article 65 paragraph (3) of Act Number 23 of 2014 concerning Regional Government, the Regional Head is only prohibited from carrying out his duties and authority as the Regional Head, which subsequently all his tasks and authorities are carried out by the Vice Regional Head until a court decision has obtained permanent legal force. An example of a Regional Head who is a defendant and is not dismissed from his position is DKI Jakarta Governor Basuki Tjahaja Purnama who at that time had been named as a defendant in a blasphemy case with a maximum penalty of 5 (five) years in prison.

Regulations in Indonesia at this time there is no clear regulation regarding the mechanism of dismissal of regional heads, which is set at this time only in the form of a cause that can cause the regional head to resign from his position. The absence of a clear mechanism regarding the dismissal of the regional head resulted in the presence of the regional head involved in legal cases still holding his position as regional head.

7. ANALYSIS:

A. Dismissal Of The Regional Head Based On Article 83 Paragraph (1) Of Act Number 23 Of 2014 Concerning Regional Government

Act Number 23 of 2014 concerning Regional Government rules concerning temporary dismissal experienced significant changes regarding the dismissal of regional heads to be better and more effective because Regional Heads who were designated as suspects and detained, were prohibited from remaining in office. This is different from Act Number 32 of 2004 which previously allowed to remain on duty until the Regional Head becomes a defendant.

The need to dismiss regional heads who have been named as suspects and detained in various legal cases behind them, provides certainty in the administration of government in the regions as top leaders in the wheels of regional government responsible for managing the government. The dismissal of the regional head as regulated in Act Number 23 of 2014 concerning Regional Government has provided certainty that the implementation of the regional government will continue even if the regional head is involved in a legal case.

The regional head is temporarily dismissed by the President without going through the Regional Parliament proposal, if charged for committing a crime that is threatened with imprisonment for at most 5 (five) years, corruption, terrorism, treason, criminal acts against state security, and / or other actions that can divide the Unitary Republic of Indonesia, based on the register of court cases. The President processes the dismissal based on a District Court decision stating the regional head is proven to have committed a criminal offense through a proposal from the Minister of Home Affairs. The process of temporary dismissal of the Regional Head is carried out if the case file of the indictment commits a criminal act of corruption, terrorism, treason and / or a crime against state security that has been delegated to the court and in the prosecution process with proven case register. Based on evidence of the case register the President temporarily suspended the regional head through a proposal from the Minister of Home Affairs.

The Regional Head is terminated permanently by the President without going through the Regional Parliament proposal, because the regional head if proven to have committed a crime of corruption, terrorism, treason and / or criminal action against state security which is stated by a court decision that has permanent legal force. The President processes the dismissal based on a court decision that has permanent legal force stating that the regional head is proven to have committed a crime as mentioned above, through the proposal of the Minister of Home Affairs. The Minister of Home Affairs processes the dismissal of the regional head based on a Court Decision that has permanent legal force stating that the regent or vice regent or mayor or vice mayor is proven to have committed acts of corruption, terrorism, treason and / or criminal acts against state security, through the Governor's proposal.

The temporary dismissal of the regional head, the duties and authorities of his office are carried out by the vice head of the region, whereas if the vice head of the region is suspended, the regional head carries out his duties and obligations. The temporary dismissal is carried out by the President upon the proposal of the Minister of Home Affairs for the Governor and / or Vice Governor, or the Regent / Vice on the Governor's proposal with consideration

of the Regional Parliament. If there is a vacancy in the position of vice regional head (Vice Governor / Vice Regent / Vice Mayor) with a remaining term of office of more than 18 (eighteen) months, the regional head (Governor / Regent / Mayor) proposes two candidates for regional vice head to be elected based on party proposals politics or a combination of political parties in plenary meetings of the Regional Parliament (Province / Kabupaten / City). The Regional Election Commission has the duty to hold elections for regional head and vice regional head who simultaneously stop and / or be dismissed during their term of office for the reasons stated above. In the event that the vacancy occurs, all tasks of the regional head and / or vice regional head are assumed by the regional secretary until the appointment of a new official by the President.

Temporary Dismissal Function of the Regional Head The temporary dismissal of the regional head and / or vice regional head charged with committing a crime is in the context of respecting and upholding the principle of the presumption of innocent which states, every person suspected, arrested, detained, prosecuted, and / or confronted before the court must be presumed innocent before a court ruling states its guilt and has obtained permanent legal force.

Purpose of Temporary Dismissal of Regional Heads:

- Temporary dismissal aims to avoid obstruction of the local government process, because the legal process will take quite a long time.
- Temporary termination is intended to facilitate government administration matters. So that the tasks of the regional head who are transferred to the interim official and the Regional Parliament as an element of regional government administrators will not be affected by the legal process of the regional official who is a defendant.
- Regional heads can be temporarily dismissed without going through the Regional Parliament proposal. This regulation is a form of confirmation of the central government's supervision of regional government.
- To ensure legal certainty and to facilitate law enforcement officials conducting judicial proceedings against defendants who have been released from their positions. When the regional head is free from duty, he cannot intervene or abuse his authority as a public official regarding a case charged with him.
- Temporary dismissal is carried out while he is still serving as regional head and / or vice regional head so as not to cause a concern or conflict of interest of the defendant that can damage and / or eliminate evidence

B. Legal Consequences If The Regional Head Who Is Accused Is Dismissed Or Not Dismissed From His Position As Regional Head

Act Number 23 of 2014 concerning Regional Government, if there is a vacancy of the Regional Head due to the temporary dismissal of the Regional Head, the legal consequence is that the Vice Regional Head carries out the duties and authorities of the Regional Head until a court decision has obtained permanent legal force. The legal consequences are purely an order from the law. On the other hand, if the Governor is suspended temporarily and there is no Deputy Governor, Act Number 23 of 2014 concerning Regional Government authorizes the President to appoint the acting Governor at the Minister of Home Affairs proposal, whereas if the Regent or Mayor is suspended temporarily and there is no Vice Regent or Vice Mayor, Act Number 23 of 2014 concerning Regional Government also gives the Minister of Home Affairs the authority to determine the Acting Regent or Acting Mayor on the recommendation of the Governor as the Representative of the Central Government. If it does not meet the elements and is dismissed, the Regent of Ogan Ilir, Ahmad Wazir Nofiadi Mawardi is an example of the Regional Head who was temporarily dismissed from his position by the Minister of the Interior Tjahjo Kumolo after he was named a suspect in a drug abuse case on 30 November 2016. The dismissal of the Regent of Ogan Ilir Ahmad Wazir Nofiadi Mawardi conducted by the Minister of Home Affairs Tjahjo Kumolo can be concluded that the Minister of Home Affairs was too hasty in making decisions and the decision was not appropriate because it was not in accordance with the orders of Article 83 of Act Number 23 of 2014 concerning Regional Government.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- a. Temporary dismissal of the regional head shall be carried out by the Minister of Home Affairs and the President without going through the Regional Parliament proposal if the regional head commits a serious act such as committing a crime that is threatened with imprisonment for a minimum of 5 (five) years, corruption, acts of terrorism, treason, acts criminal offenses against state security, and / or other acts which can divide the Unitary State of the Republic of Indonesia where the criminal case has reached trial in court. Act Number 23 of 2014 concerning Regional Government only regulates because the regional head is suspended temporarily, but does not clearly stipulate how the mechanism for the temporary dismissal of the regional head who is accused in serious criminal cases.

- b. The legal consequences of the dismissal of the Regional Head which has been designated as a defendant and the indictment fulfill the elements of Article 83 paragraph (1) of Act Number 23 of 2014 concerning Government is the duties and authority of the Regional Head carried out by the Deputy Regional Head until a court decision has obtained permanent legal force However, if the Regional Head who has been appointed as a defendant in a criminal offense is not dismissed from his position, the President and Minister may be deemed to be in compliance with the law.

9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- a. The government should clarify the rules regarding the dismissal of regional heads and the mechanism for their dismissal. This can be done by revising local government laws or making legislation derived from laws that specifically regulate the dismissal mechanism of regional heads.
- b. It is best if the regional head is temporarily dismissed when the regional head has been appointed as a suspect by the investigator, so that the regional head can focus more on handling legal cases. For this reason the legislature must revise the local government regulations.

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