

The Authority of the Regional Head in the Dismissal of State Civil Servants Based on a Court Decision That Has Permanent Legal Force

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Abstract

This study examines the authority of regional heads in dismissing State Civil Apparatus (ASN) in South Bolaang Mongondow Regency based on court decisions that have permanent legal force (inkracht). This study is important considering that regional heads have a strategic role in fostering regional personnel, but the exercise of their authority in terms of dismissal of ASN often raises legal problems, especially when dealing with a final and binding court decision. This study uses a normative juridical method with a legislative approach and case studies in the area. The results of the study show that normatively, regional heads have a clear legal basis to dismiss civil servants who have been sentenced to criminal offense based on court decisions that have been inkracht, as stipulated in Law Number 5 of 2014 concerning the State Civil Apparatus and its implementing regulations. However, in South Bolaang Mongondow Regency, the implementation of these authorities still faces challenges, such as inconsistencies in regulatory interpretations, political interventions, and lack of understanding of the general principles of good governance (AUPB). Therefore, legal certainty, strict technical guidelines, and stronger supervision are needed so that the authority of regional heads in dismissing ASN is truly carried out professionally, objectively, and fairly.

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1. INTRODUCTION

The Unitary State of the Republic of Indonesia, as stipulated in the Preamble to the Constitution of the Republic of Indonesia in 1945, has set national goals that include protecting the entire Indonesian nation, advancing public welfare, educating the nation's life, and participating in implementing world order based on independence, lasting peace, and social justice. This goal is the foundation and spirit for all elements of the nation in realizing a stable and directed government, and remaining independent in carrying out the people's mandate. In an effort to meet these goals, a government bureaucracy is needed that functions properly, effectively, and cleanly.

In the government system in Indonesia, the State Civil Apparatus (ASN) plays an important role as an element of public policy implementers, public servants, and the glue and unifier of the nation. Therefore, the integrity and professionalism of ASN are the main requirements in realizing clean, effective, and community-oriented governance. In line with this, the state through various regulations has established standards of ethics and behavior of civil servants that must be upheld, as well as administrative sanctions and dismissal mechanisms for civil servants who are proven to have violated the law, especially through court decisions that have permanent legal force (inkracht van gewijsde).

According to Law Number 20 of 2023 concerning the State Civil Apparatus, ASN is a profession for Civil Servants (PNS) and Government Employees with Employment Agreements (PPPK) who work in government agencies. The existence of ASN aims to ensure that all government institutions can run with the principles of professionalism and optimal service. Based on the merit system regulated in the law, ASN management is carried out based on qualifications, competencies, and performance, regardless of political background, race, skin color, religion, or origin. ASN management, as stated in Article 30 of Law No. 20 of 2023, stipulates that the President has the authority to delegate the management of ASN to authorized officials in ministries, general secretariats, state institutions, or regional secretariats. The authorized official in this case plays a role in providing recommendations related to the appointment, transfer, and dismissal of ASN to the Personnel Supervisory Officer (PPK), so that the ASN management process in each agency can run in accordance with their respective rules and authorities.

In addition, Government Regulation Number 94 of 2021 concerning Civil Servant Discipline regulates sanctions for civil servants who violate discipline, including civil servants who are involved in criminal acts. There are three categories of sanctions applied, namely light, medium, and severe disciplinary punishments. These sanctions range from verbal reprimands to dismissals with respect not at their own request, according to the level of the violation committed. Regarding the obligations and prohibitions of ASN, Government Regulation Number 94 of 2021 mentions a number of obligations, such as loyalty to Pancasila, maintaining national unity, and implementing government policies with full devotion. ASN is also prohibited from abusing authority, becoming an intermediary for personal gain, or receiving gifts related to their position. ASN is required to be an example in community life and carry out their duties with high integrity.

Regional heads, as Civil Service Supervisory Officials (PPK) in the regions, have strategic authority in the ASN management process, including in terms of the appointment, coaching, and dismissal of civil servants under their authority. One form of this authority is the authority to dismiss ASN who have been sentenced to a criminal offense based on a court decision with permanent legal force. This authority is explicitly regulated in Law Number 5 of 2014 concerning the State Civil Apparatus and Government Regulation Number 11 of 2017 concerning the Management of Civil Servants as amended by Government Regulation Number 17 of 2020. However, in practice in various regions, including in South Bolaang Mongondow Regency, the implementation of this authority often raises problems, both from the legal aspects of state administration, legal protection for ASN, to the potential abuse of authority by regional heads mixed with political interests.

There are not a few cases where regional heads are reluctant or vice versa, too quickly dismiss ASN without taking the proper administrative procedures, or ignore the principles of general principles of good governance (AUPB), such as the principle of legal certainty, the principle of prudence, and the principle of not abusing authority. This problem becomes even more complex when the dismissal of ASN is carried out only based on a subjective interpretation of the court decision, without considering the type, severity of the violation, or even the constitutional rights of ASN as citizens. Therefore, it is important to comprehensively examine the limits of the authority of regional heads in dismissing ASN based on court decisions that have been inkraft, as well as their implications for legal protection and administrative certainty in the context of personnel governance in the regions.

The existence of a court decision that has permanent legal force as the basis for dismissing ASN cannot necessarily be executed without paying attention to the provisions of laws and regulations and the principle of prudence in government administration. In the context of state administrative law, the dismissal of ASN is a form of state administrative

decision that has serious legal implications for a person's employment status, so the process must be based on the principles of legality, proportionality, and accountability. One of the problems that often arise in the regions, including in South Bolaang Mongondow Regency, is the disharmony between the normative authority of the regional head and the local political dynamics and perception of court decisions, where it is not uncommon for regional heads to be trapped in a dilemma between exercising their authority as a PPK and considering socio-political pressure and personal relations with the ASN concerned.

The existing regulations have also not fully provided clarity regarding the time limit and mechanism for dismissing ASN after the inkracht decision, thus opening up a space for diverse interpretations among regional heads. This results in the emergence of unequal treatment between civil servants who face similar legal situations. For example, there are regional heads who immediately dismiss ASN after a criminal verdict, while in other regions they actually retain ASN even though they have been convicted, on the grounds of waiting for technical guidelines or instructions from the State Civil Service Agency (BKN). This inconsistency not only hurts the principle of legal certainty, but also creates administrative injustice.

2. RESEARCH METHODS

This research uses a normative legal approach, which is a type of legal research that focuses on the study of literature or secondary data consisting of legal materials, such as law books, laws and regulations, and examination report results. In addition, in this study, direct observation and interviews were also carried out with related parties to complete and enrich the needed data.

3. RESULTS OF RESEARCH AND DISCUSSION

a. The Authority of the Regional Head to Dismiss the State Civil Apparatus (ASN) Based on a Court Decision with Permanent Legal Force

Regional heads as Personnel Supervisory Officials (PPK) have a strategic position in the personnel management system in the regions, one of which is the authority to dismiss State Civil Apparatus (ASN) who are proven guilty through a court decision that has permanent legal force (inkracht van gewijsde), as stipulated in Article 87 paragraph (4) letter b and letter d of Law Number 5 of 2014 concerning the State Civil Apparatus. In this provision, it is stated that ASN is dismissed without respect if sentenced to prison based on a court decision that has permanent legal force for committing a criminal act of office or other criminal acts that are threatened with imprisonment for a minimum of 2 years and related to the position.

In South Bolaang Mongondow Regency, this authority is exercised by the regent as the regional head and the PPK, who is responsible for fostering and enforcing ASN discipline within the district government. However, in practice, the implementation of dismissal of ASN based on court decisions often faces various obstacles, both from regulatory, procedural, and political aspects. One of the problems that arises is the discrepancy between the timing of the inkracht decision and the time of the dismissal, which in many cases is delayed due to the lack of detailed technical guidelines or due to administrative objections from the dismissed ASN.

Based on the results of interviews with officials of the Personnel and Human Resources Development Agency (BKPSDM) of South Bolaang Mongondow Regency, it is known that in 2023 there are several cases of civil servants who have been sentenced based on court decisions, but were not immediately dismissed by the regional head. The main reason for the delay is juridical considerations on the substance of the decision, where the BKPSDM still needs clarification whether the criminal act committed is included in the category related to the position or not. This condition

shows the need for a clear legal interpretation in linking the norms of the article with the facts of the court decision, and this often leads to multiple interpretations.

In addition, political factors also affect the implementation of the authority of regional heads. In some cases, civil servants who are sentenced to death are individuals who have close ties to certain political elites or groups, so that the dismissal process does not run as it should. This phenomenon shows that the implementation of the legal authority of regional heads often does not stand in an administratively neutral space, but is bound by the dynamics of local power that can affect the objectivity of personnel decisions. This is certainly contrary to the general principles of good governance (AUPB), especially the principles of legal certainty, professionalism, and non-abuse of authority as stipulated in Law Number 30 of 2014 concerning Government Administration.

Another problem is the lack of optimal synergy between the court, the prosecutor's office, and BKPSDM in terms of submitting copies of decisions that have been inkracht to the local government. This delay in submission has a direct impact on the slow process of dismissing ASN, even though in Article 250A of Government Regulation Number 11 of 2017 as amended by Government Regulation Number 17 of 2020, it is stated that personnel coaching officials are obliged to carry out dismissal no later than 14 days from the date of receipt of the decision.⁷ This lack of coordination between agencies shows weak administrative governance which ultimately harms the clarity of the civil servant status concerned.

Furthermore, the Constitutional Court's decision Number 87/PUU-XVI/2018 also emphasizes the importance of paying attention to the substance of justice in the implementation of the dismissal of ASN, namely that not every criminal decision can be immediately used as a basis for dismissal, especially if there is no relationship between the criminal act committed and his position.⁸ Therefore, regional heads must be careful in interpreting court decisions and ensure that every dismissal decision is in accordance with the law, with legal norms, principles of justice, and administratively valid procedures.

Based on the above conditions, it can be concluded that in South Bolaang Mongondow Regency, the authority of regional heads to dismiss ASN based on court decisions that have legal force still has a strong legal basis, but still faces challenges in terms of implementation, both due to technical, legal, and political factors. For this reason, it is necessary to strengthen coordination between agencies, increase legal capacity for regional civil servants, and prepare more detailed technical guidelines so that the implementation of ASN dismissal runs according to legal principles and does not cause administrative injustice.

b. Factors that affect the authority of regional heads in the dismissal of state civil servants (ASN) based on court decisions with permanent legal force

The implementation of the authority of the regional head in the dismissal of the State Civil Apparatus (ASN) based on a court decision that has permanent legal force (inkracht) is not an administrative action that is purely technical, but involves various factors that affect the effectiveness and accountability of the implementation of the authority. In South Bolaang Mongondow Regency, a number of factors also determine whether this authority can be exercised appropriately, proportionately, and in accordance with the applicable legal provisions.

1. Regulatory Factors and Legal Certainty

One of the most fundamental factors is the clarity of legal norms. Although in general, the authority to dismiss ASN has been regulated in Law Number 5 of 2014

and Government Regulation Number 11 of 2017 (jo. Government Regulation No. 17 of 2020), there are still provisions that are multi-interpretive, especially regarding the definition of criminal acts "related to position" or regarding the deadline for dismissal since the inkracht decision is received. This raises doubts for regional heads in making decisions, because they are afraid of acting arbitrarily or even negligent in exercising mandatory authority.

2. Human Resource Quality Factors

The second factor is the competence and understanding of the law by personnel officials within the local government. In many cases, the limited knowledge of officials in the field of state administrative law and ASN management causes the implementation of the authority of regional heads to be not carried out appropriately. Errors in interpreting the content of court decisions or dismissal procedures can lead to state administrative disputes in the future, which risks harming local governments institutionally.

3. Interagency Coordination Factors

The implementation of the dismissal of ASN also depends on the smooth coordination between the judiciary, the prosecutor's office, BKN, and the regional BKPSDM. Delays in submitting copies of decisions that have been inkracht from the court to the local government will hinder the administrative process, so that regional heads cannot exercise their authority in a timely manner. In addition, the lack of technical communication between BKN and local governments is also an obstacle in synchronizing the legal status of ASN nationally and regionally.

4. Political Factors and the Importance of Power

It cannot be ignored that in practice, the authority of regional heads in dismissing ASN is also influenced by local political dynamics. A regional head who serves as a personnel coach as well as a political actor is often faced with a dilemma between exercising legal authority objectively and maintaining the political loyalty of certain ASN. In this context, the implementation of dismissal may be delayed, not implemented, or even carried out selectively due to political pressure, personal relationships, or electoral considerations.

5. Social Factors and Community Pressure

Pressure from community groups, NGOs, or the media on the case of civil servants involved in crimes also affects the attitude of regional heads. In some cases in South Bolaang Mongondow, high public demands have caused regional heads to speed up the process of dismissing ASN without waiting for complete administrative procedures, in order to maintain the government's image. Although responsive to public aspirations, this action can be contrary to the principle of due process of law, and potentially violate the rights of ASN as citizens.

Based on the above description, it can be concluded that the authority of regional heads in dismissing civil servants who have been sentenced to death based on an inkracht court decision is greatly influenced by legal factors, institutions, human resource capacity, and political and social dynamics at the local level. Therefore, in order for this authority to be carried out consistently and accountably, it is necessary to strengthen technical regulations, improve the competence of personnel officials, and have a supervisory system that is able to minimize non-legal interventions in the personnel administration process.

4. CONCLUSION

Regional heads have the legal authority to dismiss State Civil Apparatus (ASN) based on a court decision that has permanent legal force (inkracht van gewijsde), as stipulated in Article 87 paragraph (4) of Law Number 5 of 2014 concerning ASN. However, in practice in South Bolaang Mongondow Regency, this authority cannot always be exercised effectively due to a number of obstacles, including: delay in information on inkracht decisions, weak coordination between agencies, lack of legal understanding by personnel officials, and local political intervention that affects the objectivity of regional heads in exercising their authority. Therefore, clarity in technical guidelines, human resource capacity building, and strengthening accountability are needed so that the implementation of ASN dismissal truly reflects the principles of legal certainty and administrative justice.

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