

## Legal Analysis of the Dismissal of Village Apparatus in Gorontalo Regency

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### Abstract

*The dismissal of village officials is a legal issue that often causes polemics in various regions, including in Gorontalo Regency. This study aims to analyze the legal basis, procedures, and legal consequences of the dismissal of village officials from the perspective of applicable laws and regulations. The research method used is normative juridical research with a statutory approach and a conceptual approach. Data was obtained through a study of laws and regulations such as Law Number 6 of 2014 concerning Villages, Government Regulation Number 43 of 2014, and Regulation of the Minister of Home Affairs Number 83 of 2015 concerning the Appointment and Dismissal of Village Apparatus and its amendments. The results of the study show that the dismissal of village officials in some cases is not in accordance with legal procedures and good governance principles, thus causing legal uncertainty and violations of the administrative rights of village officials. Stronger supervision and legal understanding from the local government and village heads are needed so that the dismissal process is in accordance with applicable regulations.*

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## 1. INTRODUCTION

It is the smallest government entity in Indonesia's constitutional structure that has a strategic role in the administration of government and national development. Villages are not only administrative areas, but also a forum for the implementation of democratic values, community participation, and the preservation of local customs and culture. As an integral part of the local government system, villages have autonomy recognized by the state to regulate and manage the interests of their communities based on initiatives, rights of origin, and customs recognized in the system of government of the Unitary State of the Republic of Indonesia.

The implementation of village government as stipulated in Law Number 6 of 2014 concerning Villages emphasizes that village government consists of village heads and village officials as elements of government administrators. Village officials have administrative and technical functions that assist village heads in carrying out government, development, community, and community empowerment affairs. Thus, village officials are an important part of realizing effective, transparent, and accountable village governance.

However, in practice, the dynamics of the implementation of village government do not always run harmoniously. One of the problems that often arises is the unilateral dismissal of village officials by the village head. This problem does not only occur in one region, but has become a national phenomenon. Many village officials are dismissed for no apparent reason, without going through legal procedures, and in some cases, dismissals are

made immediately after the change of village head due to differences in political views or loyalties.

Juridically, the dismissal of village apparatus has been regulated in various regulations, including Article 53 of Law Number 6 of 2014, Government Regulation Number 43 of 2014, and Regulation of the Minister of Home Affairs Number 83 of 2015 concerning the Appointment and Dismissal of Village Apparatus as amended by Permendagri Number 67 of 2017. Based on these provisions, village officials can only be dismissed for three main reasons, namely death, self-request, and dismissed for certain reasons such as age, disciplinary violations, or no longer qualified for office. Although regulations have provided clear guidelines, their implementation on the ground is often inconsistent. Many village heads view the authority to dismiss village officials as a personal prerogative, not an administrative authority limited by law.

In fact, in the theory of state administrative law, the authority of government officials is limited and must be based on laws and regulations (principle of legality).<sup>10</sup> Any government action that is carried out outside the authority or exceeds the limits set by law can be categorized as an abuse of authority (*detournement de pouvoir*). In addition, the dismissal process must go through the recommendation of the sub-district head and be determined by the decision of the village head after obtaining approval from the regent or mayor.

In the context of village government, the abuse of the authority of the village head in the dismissal of village officials can cause serious legal consequences. Not only does it have an impact on the stability of village government, but it also causes violations of the administrative rights of dismissed village officials. In a number of regions, many village officials have sued the decision to the State Administrative Court (PTUN) because it is considered to violate the general principles of good governance (AUPB), such as the principle of legal certainty, the principle of prudence, and the principle of justice.

This phenomenon was also found in Gorontalo Regency, where there were a number of cases of dismissal of village officials that caused polemics in the community. Based on the results of observations and field data, it was found that several village heads in Gorontalo Regency dismissed village officials without a strong legal basis and without going through appropriate administrative procedures. Dismissals are often carried out for political reasons, especially after the change of village head as a result of the election, where the village apparatus is considered not to be in line with the new village head.

This condition shows that there is a gap between ideal legal norms and legal practice in the field. Normatively, the village head does have the authority to appoint and dismiss village officials, but this authority must be exercised in accordance with the principles of administrative law and AUPB. When the authority is exercised arbitrarily, the action is no longer an exercise of authority, but a form of misuse of power.

Based on this background, this study focuses on legal analysis of the dismissal of village officials in Gorontalo Regency, by reviewing its juridical, procedural, and legal implications. The purpose of this study is to analyze the suitability of the practice of dismissing village officials with laws and regulations, assess compliance with the principles of good governance, and provide recommendations for local governments and village heads in the exercise of authority in accordance with the principles of legal certainty, justice, and administrative accountability.

## 2. RESEARCH METHODS

This type of research is empirical research, which is research with field data as the main source of data, such as interviews and observations. Empirical research is used to

analyze the law which is seen as a patterned community behavior in the lives of people who are always interacting and related in social aspects. Empirical legal research is legal research on the enactment or implementation of normative legal provisions in action on every specific legal event that occurs in society.

### **3. RESULTS OF RESEARCH AND DISCUSSION**

#### **a. Authority of the Village Head in the Dismissal of Village Apparatus**

In the village government system in Indonesia, the village head is the holder of the highest power in the implementation of government affairs at the village level. He has the authority to appoint and dismiss village officials as part of his managerial functions in the village government organization. The authority is sourced from Law Number 6 of 2014 concerning Villages, which emphasizes that village officials are appointed and dismissed by the village head after consulting with the sub-district head on behalf of the regent or mayor. This provision shows that the authority of the village head is not an absolute authority, but an attributive authority that is limited and must be carried out in accordance with the legal procedures set by laws and regulations.

Furthermore, in the Regulation of the Minister of Home Affairs Number 83 of 2015 concerning the Appointment and Dismissal of Village Apparatus as amended by Permendagri Number 67 of 2017, it has been explicitly regulated that village officials can only be dismissed for the reason of death, self-request, or dismissed for certain reasons such as violating the prohibition as a village apparatus, no longer meeting the requirements for office, or reach the retirement age limit.<sup>3</sup> Each dismissal must be stated in the village head's decree and reported to the regent through the sub-district. Thus, the dismissal of village officials cannot be carried out on the basis of the subjective consideration of the village head, but must be based on valid juridical reasons and correct administrative procedures.

However, in practice in the field, the exercise of this authority is often abused. Some village heads consider that village officials are part of a political team or personal loyalists, not government officials who function professionally. As a result, after the change of village heads as a result of village elections, the old apparatus is often unilaterally dismissed and replaced with people who are considered politically "aligned". This kind of pattern is clearly contrary to the principles of state administrative law which require the principle of legal certainty (*rechtzekerheid*), the principle of prudence, the principle of professionalism, and the principle of non-abuse of authority (*detournement de pouvoir*).

Based on the results of observations and empirical data in Gorontalo Regency, it was found that there are still a number of cases of dismissal of village officials that are not in accordance with the applicable legal provisions. In some cases, village officials are dismissed without an official decree, without written reasons, or even without the recommendation of the sub-district head as required by laws and regulations. This kind of action clearly shows a violation of administrative procedures, because the dismissal decision is a state administrative decision (KTUN) that must meet the formal and material elements as stipulated in Law Number 30 of 2014 concerning Government Administration.

From an administrative law perspective, every decision of a government official must have a legal basis, an objective reason, and be issued by the authorized official by following the established procedures. If one of these elements is not met, then the decision can be categorized as legally defective and can be annulled through an administrative justice mechanism. Based on the results of interviews with several

village officials in Tibawa and Bongomeme Districts, it was found that dismissals are often carried out without a process of clarification, coaching, or examination of alleged disciplinary violations that are used as reasons for dismissal.

This phenomenon shows that some village heads in Gorontalo Regency have not fully understood the concept of government authority in the state administrative law, where every authority must be exercised based on legal norms, not on the basis of personal will or political interests. Within the framework of the general principles of good governance (AUPB), the actions of village heads who unilaterally dismiss village officials violate the principles of legal certainty, the principle of proportionality, and the principle of accountability.<sup>12</sup> In addition, these actions also have the potential to violate the administrative rights of village officials protected by law, including the right to position, fixed income, and legal protection in carrying out government duties.

From the perspective of the local government, weak supervision from the sub-district and district governments also worsens this condition. In fact, in the village government legal system, the sub-district acts as an extension of the regent's hand which has the function of fostering and supervising the implementation of the authority of the village head. If the sub-district does not carry out its supervisory function optimally, the potential for abuse of authority by the village head will be even greater. Therefore, the enforcement of effective supervision mechanisms is one of the important aspects in realizing the implementation of law-abiding village government.

#### **b. Legal Implications of Dismissal That Is Not in Accordance with Procedures**

The dismissal of village officials carried out without following the applicable legal provisions has various juridical, administrative, and social implications, both for the dismissed village officials, for the implementation of village government, and for the legitimacy of the village head as a government official. Conceptually, the act of dismissing village officials is a form of state administrative decision (KTUN) that is individual, concrete, and final, which causes legal consequences for the party concerned. Therefore, the decision must meet the formal and material requirements as stipulated in Law Number 30 of 2014 concerning Government Administration, especially Article 53 which emphasizes that every decision of a government official must be based on laws and regulations and general principles of good governance (AUPB).

If the dismissal of village officials is carried out unprocedurally, for example without a valid legal reason, without consultation with the sub-district head, or without a recommendation from the regent, then the decision can be categorized as a legally defective decision (*onrechtmatige beschikking*). In state administrative law, a legally defective decision has two possible consequences: first, it can be annulled (*vernietigbaar*) by a higher official or by a state administrative court; Second, it can be declared null and void (*nietig van rechtswege*) if it is in direct conflict with the laws and regulations from the beginning. Thus, every village apparatus that is unlawfully dismissed has the legal right to file a lawsuit with the State Administrative Court (PTUN) to obtain the restoration of their rights.

In addition to the juridical implications in the form of cancellation of decisions, dismissals that are not in accordance with procedures also cause administrative and financial consequences. Administratively, legally flawed decisions cause disruption of the organizational structure of the village government due to vacancies that should be filled by legitimate apparatus. This has an impact on the decline in the effectiveness of public services, the inhibition of government administration processes, and the

weakening of coordination between village heads and other apparatus. From a financial point of view, the village government can bear the additional burden because it still has the obligation to pay the rights of the village apparatus who were unlawfully dismissed, including salaries and allowances during the period of legal disputes.

Furthermore, from the perspective of governance law, the actions of village heads who dismiss village officials without a valid legal basis can be categorized as abuse of authority (*misbruik van bevoegdheid*). Abuse of authority occurs when government officials use their authority not for the purposes specified by laws and regulations, but for certain personal or political interests. In this context, village heads who use their authority to change village apparatus for political motives or loyalty can be subject to administrative sanctions, and even potentially face further legal consequences if proven to cause state losses or violations of the rights of officials.

Another implication that is no less important is the emergence of legal uncertainty in village governance. Dismissals that are not in accordance with procedures cause public distrust of the village government and give rise to social instability, especially when the dismissed village officials receive community support. In the long run, this condition can reduce the legitimacy of village heads as public officials and hinder participatory village development efforts. Therefore, it should be emphasized that the exercise of the authority of the village head in appointing and dismissing village officials must be based on the principles of justice, legal certainty, and government accountability, not on the basis of the interests of power.

Thus, the dismissal of village officials who do not comply with procedures is not only an administrative issue, but also concerns the integrity of the law and ethics of the implementation of village government. Compliance with legal procedures is a tangible manifestation of the application of the principles of good governance (AUPB) and becomes a moral foundation for every village head in exercising his authority. The local government, through the sub-district head and the village community empowerment office, must strengthen the supervision mechanism and provide legal assistance to the village head so that the action of dismissing village officials is carried out legally, transparently, and in accordance with the applicable law.

#### 4. CONCLUSION

Based on the results of the analysis, the dismissal of village officials in Gorontalo Regency in general has not been fully in accordance with the applicable legal provisions, especially Law Number 6 of 2014 concerning Villages and Permendagri Number 83 of 2015 jo. Permendagri Number 67 of 2017. Many cases of dismissal are carried out without a valid legal basis and without going through proper administrative procedures, thus causing legal uncertainty and violations of the general principles of good governance (AUPB).

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