

Legal Study of the Appointment of Regional Head Officials from TNI/Polri Officials

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Abstract

This research aims to find out the legal rules related to the appointment of Acting Regional Heads from TNI/POLRI High Officers. The proposal to appoint active high-ranking TNI/PORI officers as Acting Regional Heads by the Ministry of Home Affairs has drawn polemics. The method used in this research is qualitative research through a normative legal approach, namely an approach that uses positivist juridical conceptions. The data collected is by using literature studies, scientific articles, legal expert opinions, and other legal sources. The data that has been obtained is then analyzed using qualitative analysis methods. Based on the research results obtained in this study, the following conclusions were drawn: (1) The appointment of Acting Regional Heads from TNI/POLRI elements is contrary to Article 109 Paragraph 2 of Law Number 5 of 2014 concerning State Civil Apparatus, which states "TNI/POLRI can fill high leadership positions after resigning from active service if needed and in accordance with the competencies determined through an open and competitive process." (2) The impact of the appointment of TNI/POLRI officials as acting governors basically violates the provisions of the Pilkada Law and also the State Civil Apparatus Law itself, besides that the appointment is also a setback for the continuity of Indonesian democracy that has been running so far.

Abstrak

Penelitian ini bertujuan untuk mengetahui aturan hukum terkait pengangkatan Pejabat Kepala Daerah dari Perwira Tinggi TNI/POLRI. Usulan pengangkatan perwira tinggi aktif TNI/PORI sebagai Pejabat Kepala Daerah oleh Kementerian Dalam Negeri menuai polemik. Metode yang digunakan dalam penelitian ini adalah penelitian kualitatif melalui pendekatan hukum normatif, yaitu pendekatan yang menggunakan konsepsi yuridis positivis. Data yang dikumpulkan adalah dengan menggunakan studi kepustakaan, artikel ilmiah, pendapat ahli hukum, dan sumber-sumber hukum lainnya. Data yang telah diperoleh kemudian dianalisis dengan menggunakan metode analisis kualitatif. Berdasarkan hasil penelitian yang diperoleh dalam penelitian ini, disimpulkan hal-hal sebagai berikut: (1) Pengangkatan Pejabat Kepala Daerah dari unsur TNI/POLRI bertentangan dengan Pasal 109 Ayat 2 Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara, yang menyatakan "Jabatan pimpinan tinggi dapat diisi oleh TNI/POLRI setelah mengundurkan diri dari dinas aktif apabila dibutuhkan dan sesuai dengan kompetensi yang ditetapkan melalui proses yang terbuka dan kompetitif." (2) Dampak dari pengangkatan pejabat TNI/POLRI sebagai pejabat gubernur pada dasarnya melanggar ketentuan UU Pilkada dan juga UU Aparatur Sipil Negara itu sendiri, selain itu pengangkatan tersebut juga merupakan kemunduran bagi kelangsungan demokrasi Indonesia yang sudah berjalan selama ini.

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1. INTRODUCTION

The appointment of TNI/POLRI officials as Acting Governors has become a common sight in recent years. This happened because the 2024 general elections were held simultaneously. Apart from that, the term of office of regional heads has ended, which requires the appointment of a new regional head in charge (Pj). As with the Governor and Deputy Governor of Southeast Sulawesi, as of September 5 2023, the term of office for the 2018-2023 period officially ended, following which the Minister of Home Affairs Tito

Karnavian appointed Commissioner General of Police (Komjen Pol) Andap Budhi Reviyanto as Acting Governor of Southeast Sulawesi. From the phenomenon of appointing TNI/POLRI officials as executors of the governor's duties, questions related to the neutralization of the TNI/POLRI remain, especially those who are still active in carrying out their duties as TNI/POLRI officials. Although the requirements for the person in charge of the Governor have been regulated in Article 201 paragraph 10 which states "to fill the vacancy in the position of governor, an official Governor is appointed from a high-ranking middle level position until the Governor is inaugurated in accordance with the provisions of statutory regulations. As for the positions of high and middle leadership regulated in Law No. 5 of 2014 concerning State Civil Apparatus, the positions of high and middle leadership based on this law are secretary general of ministries, secretary of ministries, principal secretary. Secretariat general secretary of state institutions, secretary general of non-structural institutions, director general, deputy, inspector general main inspector, head of ministerial expert staff agency, Chief Secretary to the President, Chief Secretary, Vice President, Military Secretary to the President, Chief Secretary of the Presidential Advisory Council, Regional Secretary province, and other equivalent positions (Law, Law No. 5 of 2014 concerning State Civil Apparatus, 2014).

The principle of decentralization will give rise to the right of autonomy for regions to manage government affairs that have been handed over or assigned by the central government to be managed by regional governments themselves. The principles of decentralization and the right to autonomy have a very deep philosophical meaning, namely to bring government activities closer to the community so that the community can directly participate in government and development activities. In addition, decentralization can also prevent the influence of excessive central power (overcentralization) on regions which tends to give rise to arbitrariness. This shows that the aim of decentralization and regional autonomy is to accelerate the achievement of people's welfare, which is actually the ultimate goal of the founding of the State. Indonesia's basic law (constitution) is the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). This constitution mandates that the implementation of government in Indonesia always refers to a unitary state government system by prioritizing decentralization in the implementation of government in the regions. Regarding the mechanism for replacing regional head officials, such as Governors who lead provincial regions, the central government, in this case the Ministry of Home Affairs (Kemendagri), has the power over existing policies in the region, one of whose authorities is to appoint a State Civil Apparatus (ASN) to be the person in charge temporarily responsible for a Governor who has resigned either due to the end of his term of office or due to taking part in the Regional Head Election (PILKADA) contest. However, this raises the question, what if the person in charge appointed comes from the TNI/POLRI.

However, regardless of the pros and cons that occur, the author wants to examine it legal perspective regarding the appointment of regional head officials from the TNI/POLRI elements as those responsible for the Governor. This is important, because every policy issued must still refer to applicable legal principles. Especially if you remember that Indonesia is a country based on law, not based on power, so that interactions between legal subjects, both people and legal entities, will give rise to legal consequences from these relationships. (Putra & Wajdi, 2022).

2. RESEARCH METHODS

The method used in this research is qualitative research using a normative approach. This research focuses on positive law in the form of statutory regulations. The data collected is by using literature studies, scientific articles, legal expert opinions, and other legal sources. The data that has been obtained is then analyzed using qualitative analysis methods. This was done because in analyzing the appointment of regional head officials

from the TNI/POLRI elements, the opinion of legal experts (doctrine) cannot be excluded as part of the reference and comparison. As stated above (Ibrahim, 2013) that normative legal research is a scientific research procedure to find the truth based on scientific logic from the normative side.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Research result

Procedures for Appointing Temporary Regional Head Officials in Indonesia from TNI/POLRI Elements during the ELECTION period

Direct simultaneous general elections of regional heads and deputy regional heads (pemilukada) are an important and strategic instrument for building democratic regional government. Simultaneous direct regional elections encourage the people/voters to elect regional heads and deputy regional heads (Governor and Deputy Governor, as well as Regent and Deputy Regent/Mayor and Deputy Mayor) democratically. The election of regional heads as a mechanism for selecting regional heads and deputy regional heads directly by the people in the regions has been implemented since the enactment of Article 24 paragraph (5) of Law no. 23 of 2014 concerning Regional Government. States "The regional head and deputy regional head as intended in paragraph (2) and paragraph (3) are elected as a pair directly by the people of the region concerned." Then Article 56 paragraph (1) states that "Regional heads and deputy regional heads are elected in one candidate pair which is carried out democratically based on the principles of direct, general, free, secret, honest and fair". Meanwhile, direct regional elections have been held simultaneously since the enactment of Article 3 paragraph (1) of Law NO. 8 of 2015 in conjunction with Law no. 10 of 2016 concerning Regional Elections which states "Elections are held every five (5) years simultaneously throughout the territory of the Unitary State of the Republic of Indonesia".

Article 201 paragraph (1) to paragraph (7) of Law no. 8 of 2015 which was later amended by Article 201 paragraph (1) to paragraph (8) of Law no. 10 of 2016 concerning Regional Elections, regulates simultaneous direct regional elections in 2015, 2017, 2018, 2020, and simultaneous national regional elections in 2024. When the Constitutional Court (MK) Decision No. 48/PUU-XVII/2019 in which the Constitutional Court refers to Law no. 7 of 2017 into the Regional Election Law, indirectly gave rise to a clash of understandings, where MK Decision no. 48/PUU-XVII/2019 links Law no. 7 of 2017 which regulates elections in regional elections, even though MK Decision no. 97/PUU-XI/2013, the MK firmly stated that Pilkada is not an election regime.

The implementation of simultaneous regional elections which will be carried out in stages will begin in 2015, then the second stage will be held on February 15 2017 for regional heads whose term of office ends in the second semester of 2016 and which ends in 2017. Then, in stages, the third wave is planned for June 2018, the next in 2020, 2022 and 2023 until the simultaneous national regional elections in 2027 covering all regions of Indonesia. However, the draft revision of the Election and Pilkada Law regarding the implementation of simultaneous regional elections which will be normalized and held in 2022 or 2023, has drawn pros and cons among the public and political party elites, as the draft contains regulations in Law no. 10 of 2016 concerning Pilkada, the People's Representative Council (DPR) together with the Minister of Law and Human Rights (Menkum HAM) Yasonna Laoly agreed to withdraw the revision of the Election Bill) from the 2021 Priority Prolegnas.

Legal Impact as a Result of the Appointment of Regional Heads from TNI/POLRI Elements

Regarding the public law perspective, the existence of regional government units is closely related to the concept of the rule of law, or in other words, the discourse on regional government can be understood primarily through the concept of the rule of law. On that basis, it is deemed necessary to show what a rule of law is.

The basis used as a reference by the Minister of Home Affairs for appointing active members of the National Police to act as governors is referring to Minister of Home Affairs Regulation No. 1 of 2018 concerning Leave Outside State Accounts for regional heads. Article 4 paragraph (2) of the Minister of Home Affairs Regulation contains a norm stating that those who become governors come from high-ranking/middle-level officials within the central/provincial government. Here the Minister of Home Affairs assumes that high-ranking Polri officers are at the same level as middle-ranking leaders.

According to Article 28 paragraph (3) of the Police Law, police officers can hold positions outside the police after resigning or retiring from the police service. What is meant by positions outside the police are positions that are not related to or are not based on assignments from the Chief of Police. Meanwhile, according to Article 47 paragraph (1) of the TNI Law, soldiers can occupy civilian positions after resigning or retiring from active soldier service. Furthermore, based on requests from departments and non-departmental government agencies, active soldiers can hold positions in the political and state security coordinator, state code, national defense agency, national defense council, national search and rescue (SAR), national narcotics and the Court of Justice.(Law, 2004). Meanwhile, according to Article 109 paragraph (2) of the ASN Law, it is stated that high leadership positions, in this case, which can be regional head officials, can be filled by TNI soldiers and police officers after resigning from active service if it is necessary and based on the competency determined through open and competitive process. However, several high-level leadership positions in certain government agencies, based on Article 109 paragraph (3) of the ASN Law, can be filled by soldiers and members of the police in accordance with the competencies determined by statutory regulations. The specific government agencies referred to above are agencies. government which in statutory regulations regulates the TNI and Polri which are filled through assignments and appointments from the president, TNI commander or National Police Chief.

3.2. Discussion

Procedures for Appointing Temporary Regional Head Officials in Indonesia from TNI/POLRI Elements during the ELECTION period

The appointment of the person in charge of the Governor takes into account aspects of a person's experience and leadership and can coordinate with the Regional Leadership Communication Forum (FORKOMPIMDA) Regional Leadership Deliberation (MUSPIDA) (Wicaksono, 2018). As for the appointment of regional head officials from elements of the TNI/POLRI, whether this is permitted, it is necessary to pay attention to the TNI Law and the Police Law. As stated(Munaworoh, 2022) according to Article 28 paragraph (3)(Law, Law No.2 of 2002 concerning the National Police of the Republic of Indonesia, 2002)that police members can hold positions outside the police after resigning or retiring from the police service. What is meant by positions outside the police are positions that are not related to or are not based on assignments from the Chief of Police. Meanwhile, according to Article 47 paragraph (1)(Law, Law No.34 of 2004 concerning the Indonesian National Army, 2004) that soldiers can occupy civilian positions after resigning or retiring from active soldier

service. Furthermore, based on requests from departments and non-departmental government agencies, active soldiers can hold positions in the coordinator of political and state security, national defense, military secretary to the president, state intelligence, state code, national security agency, national defense council, national SAR, Agency National Narcotics, and the Supreme Court. Meanwhile, according to Article 109 paragraph (2) Law no. 5 of 2014 concerning the State Civil Apparatus states that high leadership positions, in this case, which can be regional head officials, can be filled by TNI soldiers and police officers after resigning from active service if necessary and based on competencies determined through an open and competitive process. .

The rules regarding filling high leadership positions in the ASN Law by TNI and POLRI elements who have resigned were also approved by the Constitutional Court (MK) through the judge's considerations as contained in MK decision No. 15/PUU-XX/2022 (page 51) that the Constitutional Court's decision on Regional Head Officials also emphasizes that as long as a person serves as a middle high leader or a pratama high leader then the person concerned can be appointed as a regional head official. Thus, elements of the Police and TNI soldiers can become regional head officials as long as they hold high pratama positions and elements resign or retire from the Police and TNI services.

The appointment of Acting Regional Heads is the Prerogative of the President, while the assignment of Acting Governors and Acting Regents/Mayors is carried out by the Minister of Home Affairs as regulated in Law no. 23 of 2014 concerning Regional Government (Local Government Law). Whereas (Law, Law No. 10 of 2016 concerning Pilkada, 2016) states that the official who fills the vacancy in the regional head position will lead until the regional head is elected in the simultaneous regional elections in 2024. In Law no. 10 of 2016 concerning Regional Elections also regulates the formal requirements for Acting Regional Heads, namely Middle High Leadership Officials for acting governors, while Primary High Leadership Officials for Acting Regent/Mayor.

Dynamics postponement of the regional elections which will be held in 2024 for 271 regions whose term of office will end in 2022 and 2023. As is known, the Government and DPR have agreed to postpone the regional elections for 271 regions in 2024, this has been strengthened by the results Working Meeting (RAKER) and Hearing Meeting (RDP) held by the Government (Mendagri) together with (KPU RI and Bawaslu RI) on January 24 2022, that the national simultaneous voting in the general election starts from selecting (President and Vice President, Members of the DPR RI, DPD RI, DPRD, Province and City/Regency DPRD) will be held simultaneously on February 24 2024. Meanwhile, the national simultaneous voting in the general election will elect (Governor and Deputy Governor, Regent and Deputy Regent and Mayor and Deputy Mayor which will then be implemented on November 27 2024 (Kelibay, 2022).

As explained in Article 201 paragraph (9), (10), and (11) Law no. 10 of 2016 concerning the second amendment to Law no. 1 of 2015 concerning the Determination of Government Regulations into Law no. 1 of 2014 concerning the Election of Governors, Regents and Mayors which then reads as follows: "paragraph (9) explains that to fill the vacancies in the positions of Governor and Deputy Governor, Regent and Deputy Regent as well as Mayor and Deputy Mayor whose term of office ends in 2022 and 2023 as intended in paragraphs (3) and (5), then temporary Acting as intended in paragraph (3) is appointed, namely the Governor, Regent and Acting Mayor until the Governor and Deputy Governor of Regent and Deputy Regent and Mayor and Deputy Mayor are simultaneously elected. national in 2024." Furthermore, paragraph (10) also explains that to fill the vacancy in the position of Governor, an acting Governor will be

appointed from the Middle High Leadership Position until the Governor is inaugurated in accordance with the provisions of the statutory regulations. Then paragraph (11) also explains that in filling vacancies in the positions of Regent/Mayor, an Acting Regent/Mayor will be appointed from a Primary High Leadership Position until the inauguration of the Regent and Mayor in accordance with the provisions of statutory regulations.

Legal Impact as a Result of the Appointment of Regional Heads from TNI/POLRI Elements

Indonesia as a country that makes democracy the basis of its government, of course everything that the state does must be based on these democratic principles. One of the principles that must be fulfilled by countries that run a democratic system is the implementation of the legal system. From a public law perspective, the existence of regional government units is closely related to the concept of the rule of law, or in other words, the discourse on regional government can be understood primarily through the concept of the rule of law. On that basis, it is deemed necessary to show what a rule of law is.

The Ministry of Home Affairs led by Muhamad Tito Karnavian to appoint two TNI/POLRI generals as Acting Officers (Plt) or acting Governors in West Java and West Sulawesi became a polemic. Many parties consider that the Minister of Home Affairs' proposal does not comply with the law. This has the potential to violate a number of laws, starting from Law no. 10 of 2016 concerning the Election of Governors, Regents and Mayors, Law no. 5 of 2014 concerning State Civil Apparatus (ASN), to Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia.

This view delivered by legal researchers from the Association for Democracy (Perludem). The Regional Election Law clearly regulates the filling of vacancies in the position of governor who is appointed as acting governor (Plt) who comes from a middle leadership position. Article 201 paragraph (1) of the Regional Election Law states "To fill the vacancy in the position of Governor, Governor officials are appointed from middle and high level leadership positions until the Governor is inaugurated in accordance with the provisions of the Laws". Meanwhile, the basis used as a reference by the Minister of Home Affairs for appointing active members of the National Police as acting governors refers to Minister of Home Affairs Regulation No. 1 of 2018 concerning Leave Outside State Accounts for regional heads. Article 4 paragraph (2) of the Minister of Home Affairs Regulation contains a norm stating that those who become governors come from high-ranking/middle-level officials within the central/provincial government. Here the Minister of Home Affairs assumes that high-ranking Polri officers are at the same level as middle-ranking leaders.

However, if you look closely, the provisions of the Regional Election Law have been regulated in a limited manner that only high-ranking and middle-ranking officials can become Acting Governor. Security reasons are another reason for appointing active TNI/POLRI officers to Acting. Governor. Based on the above problems, several questions arise, namely: What are the legal consequences of implementing the idea of active TNI/POLRI members becoming executors of the duties of regional heads? What is the impact of active TNI/POLRI members becoming regional heads in Indonesia's current era of democracy? What are the advantages and disadvantages for Indonesian democracy? The results of the author's analysis are that until now the appointment of TNI/POLRI officers to Acting. The governor basically violates the provisions of the Pilkada Law and also the ASN Law itself. Apart from that, this appointment is also a

setback for Indonesian democracy at this time, and if we look at it from the point of view of the advantages and disadvantages, it can be said that the disadvantages are greater than the advantages for the sustainability of Indonesian democracy.

4. CONCLUSION

Based on the research results obtained, the author concludes the following:

1. The appointment of Acting Regional Heads from the TNI/POLRI is contrary to Article 109 Paragraph 2 of Law No. 5 of 2014 concerning State Civil Apparatus, which states "High leadership positions can be filled by the TNI/POLRI after resigning andri active service if necessary and in accordance with the competencies determined through an open and competitive process."
2. Impact from the appointment of TNI/POLRI officials to Acting. The governor basically violates the provisions of the Regional Election Law and also the ASN Law itself, besides that this appointment is also a setback for the sustainability of Indonesian democracy..

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