



Legal Consequences of Official Appointment of Non-Government Civil Servants Head District

Case of Salahutu District, Central Maluku Regency

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Abstract: The administration of the Negeri government in Salahutu Sub-district of Maluku District was in the middle of a government vacuum, so the provision of positions carried out in practice appointed the acting head of the Negeri government who was not a civil servant from the district / city environment. This issue is clearly in conflict with applicable laws and regulations. So this research aims to analyze the appointment of the acting head of the Negeri government that is not of civil servants and how the legal consequences. The concept of appointing an official to fill the government vacancy in the village or what is called by another name, is to carry out government functions related to public services and development, so that the civil servants are competent.

Keywords: Government Affairs; Appointment of Official; Legal Consequences; Civil Servants; Administrative Law.

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A. Introduction

The administration of the village government is part of the constitutional system of the Republic of Indonesia as mandated in the 1945 Constitution of

the Republic of Indonesia hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia in article 18 B paragraph (2) stating that the state recognizes and respects the customary law community units along with their traditional rights as long as they are alive and in accordance with the development of society and the principles of the unitary state of the Republic of Indonesia, which is regulated in law.

Law of the Republic of Indonesia Number 6 of 2014 concerning Villages, hereinafter referred to as the Village Law, explains that the Village Government is the administration of government affairs and the interests of the local community in the system of government of the Unitary Republic of Indonesia. Furthermore, Article 1 of the Village Law states that:

Village is a village and a customary village or what is referred to by another name, hereinafter referred to as Village, is a legal community unit that has the authority to manage and manage government affairs, the interests of the local community based on community initiatives, rights of origin, and / or rights traditionally recognized and respected in the government system of the Unitary Republic of Indonesia.

Based on the understanding of the village, the village government system in the district of Maluku is called the State. In accordance with the Regional Regulation (*Perda*) of Central Maluku Regency No. 01 of 2006 concerning the State, states that the State is a customary law community unit that is formed based on history and origin, functions to regulate the problems of customs, customary law and culture of the local community and to carry out general government affairs in accordance the provisions of the applicable laws and regulations.

The governmental system has been defeated since long ago and is still maintained today. If the village government is led by the village head, then the country is led by a head of government who is given the title of King who exercises customary authority and the authority to administer village government or what is referred to as the function of self-governing community with local self government.

The dynamics of the administration of the State government in the transition period after the implementation of the Village Law there are still many definitive vacancies in the Government of the Country so that there are approximately 562 villages in Maluku that are still the Acting Heads of the State Government.¹ When referring to article 46 of the Village Law states:

¹ <http://www.beritamalukuonline.com/2020/02/562-desa-di-maluku-masih-dijabat>. accessed on 02 March 2020 at 22:00. See also Abdul Rohman, "Kewenangan Penjabat

1. In the case of the remaining term of office of a dismissed Village Head as referred to in Article 43 of not more than 1 (one) year, the Regent / Mayor shall appoint a civil servant from the Regency / City Regional Government as acting as Village Head until the election of the Village Head.
2. The Acting Village Head carries out the duties, authorities, obligations and rights of the Village Head as referred to in Article 26.

Based on this article, if there is a vacancy in the Village Government or what is referred to by another name, the Regent / Mayor appoints a civil servant as the Village Head until the village head is elected. In fact, in Salahutu sub-district, Central Maluku district, there are 6 (six) countries. Of the six countries there are three countries that are acting heads of state governments that are not the civil servants of the three countries, namely the State of Suli, Negeri Tial, and Negeri Tengah Tengah. Based on the facts that occur, then the formulation of the problem that will be examined in this paper is how to arrange the appointment of the Acting Head of the Government of the State ?, And what are the legal consequences of the appointment of the Acting head of the Government who is not a civil servant?

B. Method

Methodological means according to a particular method or method; Systematic is based on a system, whereas consistent means that there are no contradictions in a certain framework.² That means legal research is a scientific activity, which is based on certain methods, systematics and thinking, which aims to study one or several specific legal phenomena, by analyzing them. In addition, an in-depth examination of the legal factors is also held, to then work on a solution to the problems that arise in the symptoms concerned.³

This research is a empirical legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct observation. Empirical research is also used to observe the results of human behavior in

Kepala Desa dalam Mengangkat Perangkat Desa." *Siyar Hukum: Jurnal Ilmu Hukum*, Vol. 18 No. 1, 2020, pp. 62-82; Sibuea, Hotma P., Asmak Ul Hosnah, and Clara L. Tobing. "A Study on Authoritarian Regime in Indonesia: Perspective of the 1945 Constitution as a Democratic Constitution." *International Journal of Multicultural and Multireligious Understanding*, Vol. 7 No. 1, 2020, pp. 779-792.

² Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1981, p. 42.

³ *Ibid.*, p. 43.

the form of physical and archival heritage.⁴ The purpose of the field research is to study intensively about the background of the present situation, and the environmental interactions of a social unit: individual, group, institution, or community.⁵

C. Results and Discussion

1. Arrangement of Appointment of Acting Head of State Government

Village administration is needed by organizations / institutions and leaders / heads who are able to move the community to participate in carrying out village development and carrying out village administration. The village has its own government called the Village Government, which has an understanding according to the Village Law article 1 "The Village Government is the administration of government affairs and the interests of the local community in the system of government of the Unitary Republic of Indonesia". The element of village government organizer, namely the village head or other name, is assisted by village officials. The village head or what is called by another name is the head of the village administration who leads the village administration.

The implementation of the village administration in the dismissal of the Village Head due to death, own request, termination of office, and termination which has been regulated in Government Regulation Number 43 of 2014 concerning Implementation Regulations of Law Number 6 of 2014 concerning Villages has stated that the Regent / Mayor is authorized to appoint a civil servant from the regency / city government as an official of the village head as a substitute for the vacancy of the village head until the election of the new village head.

It is clear in the provisions that it is explained that if there is a vacancy in the position of the village head, the regent or regional head must appoint an Acting Village Head. The statement of the article was also affirmed by Regional Regulation Number 4 of 2009 Article 46 which read "*Appointment of Acting Village Chief is determined by Regent's Decree*".

To fill in the temporary vacancy of village administration, the Acting Village Chief is appointed based on the Regent's decision. The definition of

⁴ Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Hukum Empiris & Normatif*, Pustaka Pelajar, Yogyakarta, 2010, p.280. See also Nurlinah, Nurlinah, and Syamsul Bahri. "Relasi Aktor dalam Proses Pengangkatan PNS dalam Jabatan Struktural di Kota Makassar." *Jurnal Administrasi dan Kebijakan Kesehatan Indonesia* 9.1 (2016): 49-62.

⁵ Sumadi Suryabrata, *Metode Penelitian*, Rajawali Press, 1992, Jakarta, p. 22.

acting explained in the Big Indonesian Dictionary, namely: "*temporary position holder; people who do other people's positions for a while*". Utrecht⁶ on his writing states that: "*acting is someone who represents a position, namely running a permanent work environment for the benefit of the state*".

With the explanation above, it can be concluded, that the acting is, someone who is given the authority to temporarily occupy a position where the position is not occupied by anyone in other words vacant or empty.

The implementation of the Village Government in Central Maluku Regency is called by the name of the State Government. The Country Government is led by a King who comes from descent who is entitled to lead the Country. Government Administration in the State of Suli, Negeri Tial, and the Middle-Middle Country in Salahutu Sub-district, Central Maluku Regency has experienced a government vacuum since 2012 until now. The government vacuum that has been running for 7 years is led by an Acting Head of the Government who is not a civil servant. Arrangement for appointment Acting village head is regulated as follows:

- a. Law No. 6 of 2014 concerning Villages. Article 46 of the Village Law states:

In the case of the remaining term of office of a terminated village head as referred to in article 43, the Regent / Mayor shall appoint a civil servant from the Regency / City Government as the acting head of the Village until the village head is elected.

- b. Government Regulation No. 43 of 2014, concerning the Implementation Act of the Village Law governing the appointment of Acting Village Heads is regulated in Articles 55, 56, and 57 which read:

Article 55:

In the case of remaining term of office of the village head who stops no more than 1 (one) year because of termination as referred to in Article 54 paragraph (1) letter a and letter b and paragraph (2) letter b, letter c, letter d, letter f, and letter g, the regent / mayor appoints civil servants from the district / city government as acting village chiefs until a new village head is elected.

Article 56:

In the case of remaining term of office of the village head who stops more than 1 (one) year due to termination as referred to in Article 54 paragraph (1) letter a and letter b and paragraph (2) letter b, letter c, letter d, letter f, and letter g, the regent / mayor

⁶ Utrecht, E., *Pengantar Hukum Administrasi Negara Indonesia*, NV Bali Buku Indonesia, Jakarta, 1957, p. 144

appoints a civil servant from the regency / city regional government as acting village head until the election of a new village head through the results of village deliberations.

Article 57:

- 1) In the event of a policy of delaying the implementation of the election of the village head, the village head whose term of office continues to be dismissed and subsequently the regent / mayor appoints the acting village head.
- 2) The policy on postponing the election of village heads as referred to in paragraph (1) shall be determined by the Minister.
- 3) Regent / mayor appoints acting village heads as referred to in paragraph (1) of civil servants from district / city governments.

Furthermore, in article 58 states:

- 1) Civil servants who are appointed as acting village heads as referred to in Article 55, Article 56, and Article 57 paragraph (3) must understand at least the leadership and technical aspects of government.
 - 2) Acting village heads as referred to in paragraph (1) carry out their duties, authorities and obligations and obtain the same rights as village heads.
- c. Permendagri No. 112 of 2014, concerning Election of Village Heads. In Chapter I general provisions Article 1 paragraph 11 states:
“Acting Village Head is an official who is appointed by an authorized official to carry out the duties, rights and authority and obligations of the village head within a certain period of time”.

Based on this regulation, the filling of the position of Acting head of the State government must be a civil servant from the district / city who has the least understanding of the leadership and technical aspects of government. This is very basic, because the filling of the acting head of the State government is in order to fill the government vacuum and to carry out government functions.

2. Legal Consequences of Appointment of Acting Head of State Government who is not a Civil Servant

The term validity is a translation of the Dutch legal term "*rechtmatig*" which can literally be interpreted as "*based on law*". In English, the term

validity is called "legality" which means "lawfulness" or in accordance with the law.⁷ The concept originated from the birth of the conception of the rule of law (*rechtsstaat*) in which government actions must be based on the existence of legal provisions governing "*rechtmatig van het bestuur*" which is centered on the application of the principle of legality in all government legal actions. This means that the concept was born as an effort to limit the power of the king who at that time was very absolute as the holder of sovereignty (*princeps legibus solutus est*). At that time, the famous adage king can do no wrong.

For this reason, law is born as a limitation of power, so that if the government's actions are not based on the law or exceeds the provisions stipulated by the law, then the government's actions become legally flawed (*onrechtmatig*) or invalid. Thus, then the principle of validity / legality is very closely related to the aim of protecting the people's rights from government action. According to Kuntjoro Purbopranoto, in order for a decision to be made to be a valid decision there are two conditions that must be met, namely material and formal conditions. Kuntjoro Purbopranoto further stated that there were material requirements for the validity of the decision including:⁸

- a. government tools that make decisions must be authorized (entitled),
- b. in the will of a government tool that makes decisions there should not be a lack of juridical (*geen juridische gebreken in de wetsvorming*),
- c. decisions must be given the form (*vorm*) stipulated in the regulations which form the basis and their formation must also pay attention to the procedure of making decisions if the procedure is stipulated firmly in that regulation (*rechtmatig*), and
- d. the contents and objectives of the decision must be in accordance with the contents and objectives to be achieved (*doelmatig*).

Van der Pot stated that a decision made by the government can act as a valid decision must meet 4 (four) conditions, including:

- a. the decision must be made by the instrument (organization) that has the power to make it,

⁷ Henry Campbell Black, *Black's Law Dictionary, 4th Edition*, USA, West Publishing Co., 1968, p. 1043.

⁸ Kuntjoro Purbopranoto, *Perkembangan Hukum Administrasi Indonesia*, Bandung, Bina Cipta, 1981, pp. 48-49. See also Ali, Desy Mutia, and Eko Prasajo & Lina M. Jannah. "The Transformation of Merit System in Indonesian Civil Servant Promotion System." *International Journal of Management and Administrative Sciences (IJMAS)* Vol. 5 No. 4, 2017, pp. 20-28; Purnomo, Eko P., and Zaili Rusli. "Politik Mutasi Jabatan Struktural Pegawai Negeri Sipil Pemerintah Daerah Kabupaten Rokan Hilir." *Jurnal Kemunting*, Vol. 1 No. 2, 2020, pp. 163-182; Kholik, Saeful. "Kebijakan Menteri dalam Negeri Tentang Persyaratan Pengangkatan Penjabat Gubernur Dalam Pemilihan Kepala Daerah." *Problematika Hukum*, Vol. 3 No. 1, 2019, pp. 65-78.

- b. because the decision is a statement of the will (wilsverklaring), the formation of the will does not contain a lack of juridical (geen juridisch gebreken in de wilsvorming),
- c. the said decision must be given the form stipulated in the regulation which is the basis and the maker must also pay attention to the method (procedure) to make the said stipulation, if the intended method is firmly stipulated in the said basic regulation,
- d. the contents and objectives of the decision must be in accordance with the contents and objectives of the basic regulations.¹⁰ In essence, the validity of the determination of the KTUN can be seen whether the determination of the KTUN is in accordance with the law or not or in other words must be in accordance with the principle of legality.

Philipus M. Hadjon stated that the principle of governance is based on the principle of the rule of law with the basic principle of legality (*rechtmatigheid van het bestuur*).⁹ If the determination of the KTUN is in accordance with the law, the KTUN is considered valid, and vice versa. In this connection, Philip M. Hadjon stated that the principle of validity in Administrative Law has three functions, namely:¹⁰

- a. For government officials, the principle of validity functions as a government norm (*bestuurnorm*)
- b. For the community, the principle of validity serves as a reason for filing a lawsuit against government action (*beroepgeronden*).
- c. For judges, the principle of validity serves as the basis for testing a government action (*toetsinggronden*).

Philipus M Hadjon also stated that the principle of legality in government actions / decisions includes: authority, procedure, and substance. Authority and procedure are the foundation for formal legality which gives birth to the principle of *praesumptio iustae causa / vermoden van rechtmatig / the validity of government actions*. While the substance will give birth to material legality. The failure to fulfill these three components of legality results in a judicial defect in a government action / decision.¹¹ Related to the validity principle, Article 8 of Law Number 30 Year 2014 concerning Government Administration determines:

- a. Every decision and / or action must be determined and / or carried out by an authorized government agency and / or official.

⁹ Philipus M Hadjon, *Hukum Administrasi dan Good Governance*, Jakarta, Penerbit Universitas Trisakti, 2010, p. 20

¹⁰ Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, 1987, p. 7

¹¹ Philipus M Hadjon, *Op. Cit.*, p. 22.

- b. Government Agencies and / or Officers in using Authority must be based on:
 - 1) laws and regulations; and
 - 2) AUPB.
- c. Government Administration Officials are prohibited from abusing the Authority in determining and / or making decisions and / or actions.

Based on these provisions, KTUN is said to be valid if it is carried out by an authorized Agency / Officer. The authorized body / official is an agency / official who is given the power to act, either in attribution, or delegated or delegated. In a contrario, if the KTUN is determined by an unauthorized Agency / Officer, then the KTUN is invalid even if obviously not authorized will cause the KTUN to be null and void (*nietig van rechtwege*). In determining the KTUN, the agency / official is obliged based on the laws and regulations and general principles of good governance (AUPB) / alignment *beginselen van behoorlijke bestuur*. In addition, in the determination of the KTUN, the authorized body / official is prohibited from misusing the authority (*missuse of competence / detournement de pouvoir*).

In line with the aforementioned provisions, Article 53 paragraph (2) of Law Number 9 of 2004 concerning Amendment to Law Number 5 of 1986 concerning State Administrative Court has determined the validity parameters of the KTUN determination. The article determines the reasons that can be used in the lawsuit as referred to in paragraph (1) include:

- a. The State Administrative Decision that is sued is contrary to the applicable laws and regulations;
- b. The sued State Administration Decree is contrary to the general principles of good governance.

Based on the above provisions, there are 2 (two) indicators that can be used as a measure of the validity of the KTUN determination, namely: 1) KTUN does not conflict with statutory regulations and 2) KTUN does not contradict the AUPB. Legislation is a written law established by an authorized agency / official, so it is authoritative.¹² The AUPB is a general principle that grows and develops in the practice of governance and judges' decisions. The first parameter gives birth to formal legality in the form of authority and procedure, while the second parameter gives birth to material legality in the form of substance.

¹² The definition of legislation can be seen in Article 1 number 2 of Law Number 12 of 2011 concerning Formation of Laws and Regulations. These laws and regulations are referred to as "Positive Laws", which are laws made by sovereign authorities. This positive law was developed in the theories of legal positivism of John Austin, Hans Kelsen, and so on who consider "*law as a command of sovereignty*". Many experts are mistaken in interpreting "positive law" as a law that applies in a certain place and time.

In accordance with the rules and reality, the status of Acting Head of the Government of the State of Suli, Tial, and Middle-Middle Country has been in conflict with applicable laws and regulations. The issue of appointing an Acting Head of the Government of the Country gives the meaning that the Government of the Central Maluku District is acting arbitrarily, so that the validity of the status of the head of the Acting Government of the State Government in the three Countries is that the fulfillment of the three components of legality above results in a juridical defect in a government action /decision. Besides that, in relation to the administration of government,

D. Conclusion

Based on the arrangement of the appointment of a State government official, the allowance for an official position must be a civil servant from a district / city who has the least understanding of the leadership and technical aspects of government. This is very basic, because the filling of the acting head of the State government is in order to fill the government vacuum and to carry out government functions. The issue of appointing an Acting Head of the Government of the State gives the meaning that the Government of Central Maluku Regency is taking arbitrary actions, so that the validity of the status of the head of the Acting Government of the State Government in the three Countries is the failure to fulfill the three components of legality mentioned above resulting in a juridical defect in a government action / decision.

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