

## The Authority of Government Officials in Delegating and Mandating



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**ABSTRACT.** Power sharing vertically in a unitary state has its consequence for the existence of the environment of both central and local governments. By the existence, another consequence appears which is the relationship between central government and local government in order to avoid the overlap of the authority implementation. One of the crucial aspects in democratic state of law (*demokratischerechtsstaat*) is legality principle (*legaliteitsbeginsel*). It means that each legal action of the government should be based on the applicable laws and regulations or the authority given by the applicable regulations. The problem statements and the aims of this research are to find out the authority of the Government Officials in running the government affairs and to investigate the meaning of delegating and mandating conducted by the government officials. Authority is the formal power owned by administration boards and/or officials or other state administrators to act in public law report including some competences. The basic principles of authority are first, the administration officials act and make decision based on their authority; second, the authority to use should be accounted for and tested by both legal norm and legal principle. Delegation is defined as delegating authority from the higher board and/or government officials to the subordinates in which the responsibility and liability is switched completely to the delegates. Mandate does not contain the transfer of authority. It is only the mandator gives his/her authority to another person (mandatary) to make decision or take actions on his/her behalf.

**KEYWORDS.** Authority, Government, Delegating, Mandating

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## Introduction

Power sharing vertically in a unitary state has its consequence for the existence of the environment of both central and local governments. By the existence, another consequence appears which is the relationship between central government and local government in order to avoid the overlap of the authority implementation.

The existence of law and country in the concept of the rule of law is two sides that cannot be separated between one and another.<sup>1</sup> One of the crucial aspects in democratic state of law (*democratischerechtsstaat*) is legality principle (*legaliteitsbeginsel*). It means that each legal action of the government should be based on the applicable laws and regulations or the authority given by the applicable regulations. This authority contains the meaning of *het vermogen tot het verrichten van bepaalde rechtshandelingen*: the ability to conduct certain legal actions. In a public law, authority (*bevoegdheid*) is considered as the main concept in both constitutional law

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<sup>1</sup> Muten Nuna & Roy Marthen Moonti, “The Independence of Socio-Political Rights and Participant of Citizens in Democracy System in Indonesia”, *Jurnal Ius Constituendum*, Volume 4 Number 2, 2019, pp. 112-113.

and administrative law: *het begrip bevoegdheid is da nook een kembegrip in het staats-en administratiefrecht.*<sup>2</sup>

Based on this authority, the government has legality either politically or legally to do various legal actions (*rechtshandelingen*), and this authority also creates the government's responsibility principle; *niemand ken een bevoegdheid uitoefenen zander verantwoordingschuldigis zijn ofzander dat ofdie uitaefening centralebestaarf* (no one can conduct authority without responsibility or control). In other words, *geen bevoegdheid zander verantwoordelijkheid* or there is no authority without responsibility. Due to the authority of the government basically comes from regulations which is the crystallization of the people's aspiration (democracy) and one of pillars in the state of law (*rechtsstaat*), the public liability of the authority holder will be juridical and political responsibility as well as juridical control through Juridical and Political Control Board through People's Representative Council.<sup>3</sup>

Each state administration, state official, and government official has legitimation that is the authority served by legislations. Hence, the government is approved and obeyed by the people and the authority or competence given by regulations to the apparatus should have legitimation from the people so that they become orderly.

"Authority is a formal power coming from legislative power (served by legislations) or from executive/administrative power. Authority is a power on certain people or government divisions. Meanwhile, competence is only applicable on certain things. In authority there are some competences. Competence is the power to conduct public legal actions."

Authority can be obtained by 3 (three) ways, attributing, delegating, and mandating. The attributive authority is obtained throughout regulations while non-attributive authority is obtained through mandate or delegation. The legal products can be made by Public Officials that have non-attributive authority to conduct the government.<sup>4</sup> Practically, the role of government in many aspects of citizens' life generally is called public services (*bestuurzorg* or public service) for people's prosperity.<sup>5</sup>

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<sup>2</sup> Stroink, F.A.M., *EnJ.G.Steenbeek Inleidinginhet Staat-en AdministratleF Recht*, Alphen AandenRijn: Samsom H.D IjeenkWillink, 1985, p. 26.

<sup>3</sup> Ridwan, "Government Public Accountability in the Perspective of State Administration Law", *Journal of Law*, Volume 10 Number 22, p. 28.

<sup>4</sup> Nafisakhatul Layliyah, "Competence in State Administration Law". p. 1.

<sup>5</sup> Mustamu Julista, "Discretion and Responsibility of Government Administration", *Sasi Journal*, Vo. 17 No. 2, 2011. p. 1.

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Basically, the authority given to the government is not different from the state administration in absolutism era. What makes them differ is that the authority is limited with the rules contained in regulations which are based on the concept of the rule of law applied. L.J.A Damen as cited in Ridwan states that in a legal country, the involvement of government in the citizens' life should be referred to legality principle (*legaliteitsbeginsel*) which is considered as the most important principle in the state of law. Unfortunately, the legality principle which is referring more to the written law has many problems as what happens in Indonesia. Phipus M. Hadjon states that the idea of *rechtsstaat* tends to be legal positivism. The consequence is that the law should be created consciously by the board.

It is also what makes the situation becomes dilemmatic for the government to run the task for the sake of people's welfare. The written regulation will not be able to accommodate all aspects of human's life as life is continuing dynamically. It means that every time discrepancy happens between legality principle and reality to face. This triggers the discovery of *freis ermessen* giving contest by the government; the government's independency to act initiatively in solving the problems. This independent authority of the government is well-known as discretion.<sup>6</sup>

By this discretion authority, most of the power which is held by law-making institution should be turned over to the government as the executive board. So, the legislative board supremacy is switched to be executive board supremacy. It occurs because the state administration solves the problem without waiting for the change of laws by legislative board. In principle, the government administrative officials cannot refuse to provide public services without any legal reasons or anything related to unclear legal reasons, as long as it is still in their authority area.<sup>7</sup>

Referring to the determination, the problems occurs related to the limitation of the government's act in using discretion and who will be responsible for that action, whether it is the government's organ as the official or as the individual, and also what kind responsible to bear.<sup>8</sup>

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<sup>6</sup> Sufriadi, "Job Responsibilities and Individual Responsibilities in Government Administration in Indonesia", *Juridical Journal*, Vol. 1 No. 1, 2014. p. 59.

<sup>7</sup> Mustamu Julista, *Op.Cit.*, p. 2

<sup>8</sup> Sufriadi, *Op.cit.* p. 60.

## Method

This study applied normative law research using normative case study in form of legal action product such as studying the regulations. It focuses on laws as norms applied in the community which become the references of the people. So, the normative law research focused on the inventory of positive laws, legal principles and doctrines, legal findings in cases in *concreto*, systematic law, synchronization level, the comparison of law, and the history of law.<sup>9</sup>

## The Authority of Government Officials in the Implementation of Government Affairs

In State Administration Law, we are familiar with the term competence. Competence becomes the limitation of power for what extent we can do or cannot do something. Generally, competence in State Administration Law is the power to utilize the resources to reach for goals in organization and the task is generally defined as obligation or a job to be done by someone in his/her work.

Authority is the formal power owned by administration boards and/or officials or other state administrators to act in public law report including some competences. The basic principles of authority are first, the administration officials act and make decision based on their authority; second, the authority to use should be accounted for and tested by both legal norm and legal principle.

According to Indonesia Dictionary, competence and authority, both are defined as right and responsibility to act and power to make decision, to order, and to delegate the responsibility to other people/boards.<sup>10</sup>

Meanwhile, in Black Law Dictionary, the authority is defined broader. It is not only in doing the practice of power but also in implementing and enforcing the law. Further, it is defined as definite obedience, it contains command, it is to decide, and there is a jurisdictional supervision in it. Moreover, it is also described as prestige, charisma, and physical strength. Competence is the main concept in state constitutional law and state

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<sup>9</sup> Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Bandung, PT. Citra Aditya Bakti, 2004, pp. 52-53.

<sup>10</sup> Nafisakhatul Layliyah, "Competence in State Administration Law". pp. 3-4.

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administrative law, because the competence contains right and responsibility. In state constitutional law, competence is described as rule of law (*rechtskracht*). It means that only legal actions (based on competence) can obtain rule of law (*rechtskracht*). Meanwhile, according to Bagir Manan as cited in Ridwan HR, competence in legal terminology is not same with power. Power only describes the right to do or not to do something. Competence includes both right and responsibility. Without competence, people cannot do anything.<sup>11</sup>

In administrating the government in the region, local government has the authority to form the legal products in the region. Observing the Article 7 Verse (1) Law Number 12 of 2011 concerning the formation of laws and regulations that administrates the hierarchy of laws and regulations, the regional legal products that includes in the hierarchy is the Province Regulation and Regional/City Regulation. However, referring to the Article 8 Verse (1) Laws Number 12 of 2011 concerning the formation of Laws and Regulations, there are other kinds of regulations recognized such as regulation determined by Regent/Mayor.

The further determination about the regional legal products then is regulated in Minister of Home Affairs' Regulation Number 80 of 2015 about the determination of Regional Legal product. The regional legal products regulated in Minister of Home Affairs' Regulation Number 80 of 2015 about the determination of Regional Legal product consists of Provisions and regulations. The legal products in the form of regulations consist of:<sup>12</sup>

- a. Regional Regulation;
- b. Regulation of Regional Head;
- c. Joint Regulation of Regional Heads; and
- d. Regulation of Regional House of People's Representative;

Meanwhile, the legal products in the form of provisions consist of:

- a. Decree of Regional Head;
- b. Decree of Regional House of People's Representative;
- c. Decree of Head of Regional House of People's Representative; and
- d. Decree of Honorary Board of Regional House of People's Representative

One of principles of state of law (*rechtsstaat*) is legality principle (*legaliteitbeginsel*), as the foundation to give authority to the government as

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<sup>11</sup> Moh. Mahfud MD, & Sf. Marbun, *Kompetensi dalam Hukum Administrasi Negara*, Jakarta: Airlangga, 2009. p. 75.

<sup>12</sup> Ali Marwan Hsb & Evlyn Martha Julianthy, "The implementation of Local Government Attribution Authority based on Law Number 23 of 2014 concerning Local Government", *Indonesian Legislation Journal* Vol. 15 No. 2, 2018, pp. 6.

the legality in doing legal actions. In a state of law, particularly in continental system, this legality principle is strictly embraced which indicates that without any authority given by laws and regulations, the government cannot conduct the legal actions. However, theoretically and practically, particularly in modern country, it is almost impossible to formulate the functions and authorities of the government in detail by set them in laws and regulations. It is because the functions and authorities of the government are closely related to provide services to public that is continuously developed. Automatically in government legal actions, there is an implication of freedom (*beoordelingsruimte*) or implementation.<sup>13</sup>

This authority can be considered as one of main studies in state administration system. This term is also becoming the answer of the question about the basic of governmental administration in doing actions. Further, the discussion about authority will also refer to a kind of responsibility in state administration when there is discrepancy or deviation of the policy made. In this part, the discussion will be related to how the efforts are made by the citizens as the injured party on the policy issued by the government apparatus. If the authority run by the government is not appropriate to the laws and regulations or the authority is misused or applied arbitrarily which causes the violation of the citizens' rights, then the citizens will get the legal protection (*rechtsbescherming*), for example through administrative justice.

Authority and competence are terms used in public law field. But, there is a difference between the two. Ateng syafrudin states that the term of authority (*kewenangan, gezag*) should be differentiate from competence (*wewenang, bevoegheid*). Authority is defined as formal power coming from the regulations, while competence is only a certain part of the authority. There are competences in the authority (*rechtsbevoegdheden*). Competence is the scope of public legal action, the scope of government's competence, not only in making decision (*bestuur*), but also in carrying out the tasks, and giving and distributing the competence is particularly determined in laws and regulations.<sup>14</sup>

Competence is the right owned by the board and/or government officials or other state administrators to make decision and/or to take action in governmental administration.<sup>15</sup> Governmental authority which is further

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<sup>13</sup> Ridwan, *Op.cit.* p. 29.

<sup>14</sup> Laws Number 30 of 2014 concerning Government Administration.

<sup>15</sup> *Ibid.*



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called as authority is the power of by the board and/or government officials or other state administrators to act in public law field.<sup>16</sup>

In legal terms, competence is a legal power based on law. Operationally, competence is an ability to do certain legal actions, or to conduct positive law. Hence, it can create the legal relationship between government and citizens. As what has been discussed above, the governmental competence can be obtained by attributing, delegating, and mandating. In a state of law, it has been determined that the delegation of competence, characteristics, and contents of the competence, as well as the implementation of it must obey the juridical boundaries. In the delegation of authority or vice versa, there are either written or unwritten regulations. If the authority run by the government is not appropriate to the laws and regulations or the authority is misused or applied arbitrarily which causes the violation of the citizens' rights, then the citizens will get the legal protection (*rechtsbescherming*), for example through administrative justice.<sup>17</sup>

## Delegating and Mandating by Government Officials

The definition of competence delegation is giving the competence to the people pointed by the competence holder. The use of competence delegation wisely is the critical factor for the effectiveness of an organization. Therefore, the role of competence delegation is crucial in an organization.

Sometimes, someone who has certain position has limitations in doing a job such as number of tasks and skills. If these limitations cannot be overcome, it will worsen the organization's performance. Hence, there should be a delegation of the competence and responsibility. Delegating is:

- 1) an organized process in organization/organizational framework involving as many people and individuals in making decision, supervising, running tasks relating to task certainty; and
- 2) an action to over the task (certainly and clearly), authority, right, responsibility, obligation, and accountability to the subordinates individually in each task position. The delegation is conducted by

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<sup>16</sup> *Ibid.*

<sup>17</sup> Ridwan, *State Administrative Justice: The Manifestation of Success in Politics of Law in New Order Regime*, Paper as Lecture material in Master of Law Program, Postgraduate Program, Faculty of Law, Islamic University of Indonesia, 2011, p. 6.

dividing the tasks, authority, right, responsibility, obligation, and accountability in a formal job description in an organization.

Delegation is defined as delegating authority from the higher board and/or government officials to the subordinates in which the responsibility and liability is switched completely to the delegates.<sup>18</sup>

The use of competence delegation wisely is the important factor for the effectiveness of an organization. Therefore, the role of competence delegation is crucial in an organization. By having tasks, competences, and responsibilities, the individuals should agree to give their accountability on the tasks they are given to. It is appropriate to the fact that they will always be asked for their liability on the tasks they run and their responsibility they are given to. Everything related to tasks, competences, responsibilities, and liabilities are the elements of the competence delegation.

Competence delegation is only the stage of a process when giving the competence which has function to take off the position by carrying the responsibility out.<sup>19</sup> According to Manullang, delegating is an activity of somebody assigning his/her staffs/subordinates in order they conduct some parts of the manager's tasks and in the same time giving the authority to the staffs/subordinates, so they can do the tasks appropriately and take responsibility on the task delegated to them.<sup>20</sup>

There are three elements related to the delegation namely task, authority, and accountability.

1. Task

Task is works that should be done by somebody on a certain position. The task can reinforce the employees to be more productive in a company, hence the work effectiveness can be achieved.

2. Authority

Authority is rights or competences to make all decisions related to one's function. In running the competence delegation in a company, it should be based on the authority because the authority gives the employees rights in making decision related to their interests and functions for the company.

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<sup>18</sup> Laws Number 30 of 2014 concerning Government Administration.

<sup>19</sup> Malayu S.P. Hasibuan, *Human Resource Management*, Jakarta. Haji Masagun, 2006. P. 72.

<sup>20</sup> Manullang, M., *Management of Personnel 3<sup>rd</sup> Edition*. Yogyakarta, Gajah Mada University Press, 2006. p. 10.

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### 3. Accountability

Accountability is reporting on how somebody has conducted his/her tasks and how he/she uses the competence given to him/her. Responsibility is the most important thing in carrying the competence in a company because the responsibility of the employees is giving the report or accountability to the decision they have made.

Delegation, someone who gives delegation is called delegator and the recipient is called delegates. In delegation, all competences are switched to the delegates including the responsibility. In administrative relationship, if the delegation is sued, there is only one to be sued, the delegate. To make it clear, the Ten Berge states that the conditions of delegation are:<sup>21</sup>

1. Delegation should be definitive, it means that delegates cannot use their competences that have been authorized to them.
2. Delegation should be based on the determination of the laws and regulation, it means that delegation will be possible if there is the determination to delegating in laws and regulation.
3. The delegation cannot be done to subordinates, it means that in staffing hierarchy, there should not be a delegation.
4. The responsibility to give explanation, it means that delegators have right to ask for the explanation about the implementation of the competence.
5. Policy rules (*beleidsregel*), it means that the delegators should give the instruction (direction) about the use of the competence.

The principle which is well known in delegating is the principle of trust. The delegators only delegate some parts of their competences to the trusted delegates. This trust should be based on objective consideration related to their skill, ability, honesty, ability, and responsibility of the delegates themselves.<sup>22</sup>

Meanwhile, mandating can be occurred if the government's organs allow their authorities run by other organs on their behalf. Based on Government Administration Law, mandating is defined as giving authority from the higher Boards and/or government officials to the lower boards and/or officials in which the responsibility and liability have to be on ones who authorize the mandate.<sup>23</sup>

Mandate does not contain the transfer of authority. It is only the mandator gives his/her authority to another person (mandatary) to make

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<sup>21</sup> Mila Marwiyah Hasibuan, *Competence Delegation in State Administration Law*. p. 7

<sup>22</sup> *Ibid.*, p. 8.

<sup>23</sup> Nafisakhatul Layliyah, "Competence in State Administration Law". p. 7.

decision or take actions on his/her behalf.<sup>24</sup> However, mandate according to Rosjidi Ranggawidjaja following the statement of Heinrich Tripel, is *opdrach/errand* to another organ to do competence or a legal act conducted by the competence holder by giving fully authority to other objects in running competence of the mandatory on his/her behalf. Therefore, mandate is same with a particular authority to do certain things.<sup>25</sup>

In the Bill of Government Administration, it is formulated that mandate is authority given by a government's organ or delegator to other people or organs to take decisions on behalf of the mandator.<sup>26</sup>

In *Algemene Wet Bestuursrecht (Awb)*, mandate means the giving of competence from the government's organ to another organ to take decision on his/her behalf (mandator). In the other words, as what has been stated by H.D van Wijk Willem Konijnenbelt, "mandate occurs if the government organ allow his/her authority run by another person on his/her behalf" (Mandate, *een bestuursorgaan laat zijn bevoegheid namens hem uitoefenen door een ander*) (there is no statement about the transfer of competence, and there is no discussion about delegating the competence in mandating. There is no change of competence in mandating) (at least in terms of formal juridical).<sup>27</sup>

Mandate in State Administration Law principles is different with mandatory in the construction of mandatory according to the explanation of 1945 Constitution before the change. In the State Administration Law, mandate is defined as order to conduct the superior's task. The authority, anytime, can be done by the mandatory, and there is not responsibility transfer. Based on the explanation, if the competence is obtained by government organ through attribution, it is original coming from laws and regulations which is from certain articles in laws and regulations. The mandatory can create new competence or broaden the existing competence with intern and extern responsibility of the implementation of the distributed competence which is completely on the mandatory.

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<sup>24</sup> J.G. Brouwer in Sonny Pungus, "The Theory of Authority."

<sup>25</sup> Sufriadi, *Op.cit.* p. 63.

<sup>26</sup> *Ibid.*

<sup>27</sup> Ridwan, *Op.Cit.*, pp.33-34.

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## Conclusion

Authority is the formal power owned by administration boards and/or officials or other state administrators to act in public law report including some competences. The basic principles of authority are first, the administration officials act and make decision based on their authority; second, the authority to use should be accounted for and tested by both legal norm and legal principle. Delegation is defined as delegating authority from the higher board and/or government officials to the subordinates in which the responsibility and liability is switched completely to the delegates. Mandate does not contain the transfer of authority. It is only the mandator gives his/her authority to another person (mandatary) to make decision or take actions on his/her behalf.

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