

The Nature OF THE Existence OF Deputy Regional Heads IN THE State Administration System OF THE Republic OF Indonesia

Mohan Roslikana¹, Gatot Dwi Hendro W¹, Zainal Asikin¹, RR. Cahyowati^{1*}

¹Doctoral of Law, Faculty of Law, University of Mataram

Email: a.cahyowati@gmail.com

Abstract:

Regional Heads have many duties and authorities that are born because of the autonomy regulations provided by the law, so it is necessary to have a Deputy Regional Head. The duties and powers of the Deputy Regional Head are very limited, so they are not free to move and act for their constituent communities. The purpose of this study is to analyze the nature of the existence of deputy regional heads and the State Administration System of the Republic of Indonesia. The research method, is the type of normative legal research, with a philosophical approach, a statutory approach, and a conceptual approach. In conclusion, the essence of the existence of deputy regional heads in the constitutional system of the Republic of Indonesia is as a complement to the various limitations inherent in regional heads, a balancer to provide security conducive to the smooth running of the wheels of government in the regions, and as a divider for the burden of the regional head election process. Philosophically, the existence of a deputy regional head should function like a wife in the household system. The wife has clear and clear duties and functions as well as authority while still making her husband the main mecca. There is a concrete mandate and delegation of tasks that are part of the wife's authority in running the ecosystem in the household. The role of the respective functions and responsibilities between the husband as head and the wife as deputy's head and there will also be duties and responsibilities that are a shared burden

Keywords: Nature, Deputy Regional Head, Indonesian State Administration System.

I. Introduction

Article 18 of the 1945 Constitution of the Republic of Indonesia (hereinafter written as the 1945 Constitution of the Republic of Indonesia), paragraph (4) stipulates Governors, Regents, and Mayors respectively as Heads of Provincial, Regency, and City Governments are democratically elected. This article only determines the positions of Governor, Regent, and Mayor, but there is no stipulation for the position of deputy regional head, in other words, the 1945 Constitution of the Republic of Indonesia explicitly only mentions 'regional heads' and does not mention 'deputy regional heads', but there is Article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia which orders the enactment of laws relating to the administration of regional government. In terms of attribution, in the 1945 Constitution of the Republic of Indonesia, the

regulation of deputy regional heads is quite weak. By delegation, in Law Number 23 of 2014 concerning Regional Government, the duties and functions of the deputy regional head are only limited to assistance. By mandate, the authority of the deputy regional head is obtained from the regional head's decision (Yanti & Nasution, 2021), so that it is potentially not empowered if the relationship between the regional head and deputy regional head is not harmonious (Saraswati, 2010).

The position of deputy regional head was never mentioned when the changes to Chapter VI on Regional Government were discussed in the ad hoc committee session for the Second Amendment to the 1945 Constitution in 2000. At the time draft Law on Regional Government was discussed in 2004. As directly elected officials by the people, the position of deputy regional head should be regulated in the 1945 Constitution, because if it is not regulated then

the position is not needed and does not need to be held in law. Law Number 23 of 2014 concerning Regional Government does not review or explain too much about the position of Deputy Regional Heads in Regional Government, also in various legal literature, as well as the opinions of experts.

Regional heads have many duties and authorities, both those born due to the autonomy regulations given by the law as well as the duties and authorities delegated by the Central Government as co-administration tasks (Sarkawi, 2015). Given the many and wide range of duties and authorities, it is very necessary to have a Deputy Regional Head, as regulated in Article 66 of Law Number 23 of 2014 concerning Regional Government. The duties and authority of the deputy regional head are very limited and are the parties who assist the regional head, making the deputy regional head not so free to move and act for his constituent communities. This condition often creates jealousy in the community, even causing conflicts between communities, the cause is if the regional head does not pay attention to the constituents of the deputy regional head, even more so if the regional head and deputy regional head packages come from different parties.

Furthermore, Article 56 Paragraph (1) of Government Regulation Number 6 of 2005 concerning Election, Ratification of Appointment and Dismissal of Regional Heads and Deputy Regional Heads states that regional heads and deputy regional heads are elected in one pair of candidates which is carried out democratically based on direct, general, free principles, confidential, honest and fair. In the administration of regional government, regional heads and deputy regional heads should have proportional duties and authorities, so that they approach balance (equilibrium) (Sugiarto, 2019; Sugianto, 2017). Regional heads and their representatives in carrying out their duties and authorities must not exceed the limits of authority, both those mandated by law and those delegated by the assignor of tasks and authorities (Gibert & Suardita, 2021). In the implementation of government in the regions, there are still egocentric regional heads and deputy regional heads in carrying out their duties and authorities, so that the essence of the pair which

should mean complementary and complementary is not achieved according to its aims and objectives.

Regional heads and deputy regional heads who are elected in a package of pairs of candidates, it is intended that the implementation of government in the regions is not centered on one person alone (Nazriyah, 2017) or only concentrated on the regional head alone, therefore the regional head through legislation is given a deputy regional head to help facilitate the implementation of government (Pitono, 2012). However, the phenomenon that occurs is the task and authority of the deputy regional head, the mechanism is not clarified or further regulated in a strict and firm manner in a statutory regulation. Thus the Deputy Regional Head does not have its own direction or mechanism to carry out the duties and authorities that have been entrusted by the people/community in accordance with democratic theory (Prihatiningtyas, 2018). Deputy Regional Heads by Law Number 23 of 2014 concerning Regional Government, are mandated to carry out their obligations and stay away from prohibitions in carrying out their duties. The duties and authorities of the deputy regional head are highly dependent on the relationship pattern between the regional head and the deputy regional head (Dahlan & Siregar, 2018). This happens because the deputy regional head based on the regional government law is still placed as an assistant to the regional head, which should be used as an equal partner to the regional head.

The legal politics behind the regulation regarding the relationship of authority between regional heads and deputy regional heads who are only "helpers" or only as "spare tires" because of the authoritarianism of the paternalistic regional leadership model, as well as the cause of incomplete norms because there are no or it is not regulated regarding the authority of the Deputy Regional Head in carrying out his duties in administering regional government (Susianto, 2022).

From the job descriptions, obligations and prohibitions, it is one of the causes of regional heads and deputy regional heads in the middle of the journey through the wheels of government tend to run independently, and even compose each other's strengths, and it is possible at the end of their term

of office to become mortal enemies. in the next regional head and deputy regional head election period. The formulation of the problem in this paper is, the nature of the existence of deputy regional heads and the State Administration System of the Republic of Indonesia.

II. Research methods

The type of normative legal research is research that examines and analyzes laws and regulations, legal principles and legal norms (Sonata, 2014). With a research approach: a philosophical approach, a statutory approach, and a conceptual approach. Types and Sources of Legal Materials, this research uses library materials or secondary data which includes primary legal materials and secondary legal materials. Legal material collection techniques, collection and study of primary legal materials as well as secondary legal materials, conducted documentation studies in libraries, and collected legal materials via the internet. Legal materials processing and analysis techniques, analyzed qualitatively (the legal material obtained was analyzed in depth, holistically and comprehensively).

III. Discussion

The essence or essence of democracy as expressed by Hans Kelsen, democracy is a way to create a good atmosphere for reaching a compromise between the majority and minority communities; and compromise is the resolution of a problem (conflict) through a norm that is not entirely in accordance with the interests of one party, nor is entirely in conflict with the interests of the other party. Democracy is an approach towards the ideal of perfect self-determination (Thalhah, 2008). The essence of democracy is compromise. Compromise is constructed as the resolution of a problem through a norm that is not entirely in accordance with the interests of one of the parties. The concept of democracy is defined as a system of government in a country where all citizens have the same rights, obligations, position and power, both in carrying out their lives, as well as in running the country or supervising the running of state power, either directly or through their representatives. elected

fairly and honestly with a government that is run solely for the benefit of the people, so that the system of government in the country comes from the people, for the benefit of the people." (Cahyowati, 2012). Thus, the election of regional heads and deputy regional heads democratically is the embodiment of a government system that originates from the people, by the people and for the benefit of the people.

Understanding the nature of the existence of deputy regional heads, in the perspective of the Natural Law School, according to Thomas Aquinas, natural law is the basis or basis for other laws that are true which cannot be doubted. The theory of natural law places humans as creatures who live in the wild and every human being experiences challenges and chaos, so that humans agree to form a political bond which on the largest scale is called a state (Sumanto, 2017). This natural law works in the universe as a creation of God Almighty (Asikin, 2020).

In line with this, Aristotle's thought as one of the sources of analysis of Thomas Aquinas' thought, natural law is a law that has the following characteristics:

- a. Regardless of human will or not depending on human view
- b. Valid without time limit, still valid anytime
- c. Universal, applies to everyone
- d. Applies in all places or applies anywhere, knows no place limits
- e. Clear to humans

Based on its independent nature from human will, Thomas Aquinas stated that all events in this world are governed and guided by an eternal law (*lex externa*) which is the basis of other regulations. This *lex eterna* is the will and thought of God who created this world. While humans are given the ability to think by God and the ability to distinguish what is good and what is not. As well as getting to know various laws and regulations that come directly from the "eternal law". This rule is what Thomas Aquinas called the law of nature (*lex naturalis*) (Asikin, 2020).

Natural law is actually a concept that includes many theories in it. Various assumptions and opinions that are grouped into natural laws have emerged from

time to time. Studying the history of natural law is actually the same as skinning the history of humans who struggle to find absolute justice in this world and their failures. Natural law is in accordance with the situation and conditions, so that at one time the natural law appears in force, but at other times the law will be ignored. However, the laws of nature never die. Natural law is essentially "law whose norms come from God Almighty, from the universe, and from human reason. Therefore, it is described as a law that applies eternally. Epistemologically, natural law has been interpreted in various ways by several groups at different times. The description of the laws of nature according to the views of Thomas Aquinas which is based on the many thoughts of Aristotle. Aristotle is a legal thinker who first distinguished between natural law and positive law (Asikin, 2020). Natural law is a law that applies always and everywhere because of its relationship with the rules of nature and the creator of the living universe. This law by Aristotle is mentioned as a law that never changes, never disappears, and applies automatically. Natural law is distinguished from positive law, which entirely depends on human provisions.

From an ontological perspective, the law must be obeyed in order to achieve the goal of justice. Apart from being a general virtue (natural law), justice is also a special moral virtue. Justice determines how good relationships are between human beings. These relationships include justice in the distribution of positions and public property, justice in buying and selling transactions, justice in criminal law, and justice in private law.

According to Thomas Aquinas, the laws of nature are rather general and unclear to everyone or difficult to understand. Epistemologically it is too difficult for humans to understand what is in accordance with the laws of nature (God's will). Therefore, it is necessary to draft state laws that are more concrete in regulating living together. This is the positive law. If positive law conflicts with natural law, natural law wins and positive law loses its power. This means that natural law has real legal force. Positive law only applies if it comes from natural law. Laws that are unfair and unacceptable to reason that are contrary to natural norms cannot be called laws but deviant laws.

Natural law still applies, also "if" God did not exist because part of the nature of natural law includes human reason. On the other hand, the acknowledgment of the existence of God is still as the creator of the universe, indirectly God remains the foundation of natural law. This law of nature has always been recognized throughout the centuries of human history. Natural law is a human effort to find the ideal law and justice.

The existence of the Regional Head as the ruler in a region is the representative of the region he leads, he is also the bearer of a position that is a moral responsibility that cannot be separated under any conditions as long as the position is still his responsibility. In fact, regional heads who are actually ordinary people will not be free from their imperfect nature, there will be times when humans stumble by imperfect conditions that become obstacles in carrying out their duties and roles in leading the region. Obstacles in the form of limited time, limited health, limited physical and mental abilities and many other limitations that will make him have to relinquish his responsibility to lead the region temporarily or for a long time maybe even permanently.

Thus, the nature of the existence of deputy regional heads in the constitutional system of the Republic of Indonesia is a complement to the various limitations inherent in regional heads. Regulation, the role of Deputy Regional Heads since the beginning of the formation of the Republic of Indonesia, firstly as a counterweight to provide security conducive to the smooth running of the wheels of government in the regions, secondly, as a distributor of the burden of the regional head election process. These two functions are a small part of the overall existence of an ideal deputy regional head. Philosophically, the existence of a deputy regional head should function like a wife in the household system. The wife has clear and clear duties and functions as well as authority while still making her husband as the main mecca. There is a concrete mandate and delegation of tasks that are part of the wife's authority in running the ecosystem in the household. The respective roles and responsibilities of the husband as head and wife as deputy head, and there will also be duties and responsibilities that are a shared burden.

IV. Conclusion

The essence of the existence of deputy regional heads in the constitutional system of the Republic of Indonesia is as a complement to the various limitations inherent in regional heads, a balancer to provide security conducive for the smooth running of the wheels of government in the regions, and as a divider of the burden of the regional head election process. Philosophically, the existence of a deputy regional head should function like a wife in the household system. The wife has clear and clear duties and functions as well as authority while still making her husband the main mecca. There is a concrete mandate and delegation of tasks that are part of the wife's authority in running the ecosystem in the household. The role of the respective functions and responsibilities between the husband as head and the wife as deputy's head, and there will also be duties and responsibilities that are a shared burden.

References

1. Asikin, Z. (2020). *Mengenal Filsafat Hukum*. Andi Publisher. Yogyakarta
2. Cahyowati, R. (2012). *Politik Hukum Keterwakilan Perempuan di Dewan Perwakilan Rakyat Republik Indonesia (Tinjauan Berdasarkan Prinsip Keadilan, Hak Asasi Manusia dan Demokrasi)*. Disertasi Program Doktor Ilmu Hukum Fakultas Hukum Universitas Brawijaya.
3. Dahlan, D. M., & Siregar, A. R. M. (2018). Tugas Dan Kewenangan Wakil Kepala Daerah Menurut Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah Dan Perubahannya. *Jurnal Hukum Responsif FH UNPAB*, 6(6), 93–104.
4. Gibert, Y. F., & Suardita, I. K. (2021). Pertanggungjawaban Kepala Daerah Dalam Penggunaan Diskresi Terkait Penanggulangan Pandemi Covid-19. *Jurnal Kertha Negara*, 9(3), 175–188.
5. Nazriyah, R. (2017). Calon Tunggal dalam Pilkada Serentak Tahun 2015 terhadap Putusan Mahkamah Konstitusi No 100/PUU-XIII/2015. *Jurnal Konstitusi*, 13(2).
6. Pitono, A. (2012). Asas Dekonsentrasi dan Asas Tugas Pembantuan dalam Penyelenggaraan Pemerintahan. *Jurnal Kebijakan Publik*, 3(1), 15–26.
7. Prihatiningtyas, W. (2018). Konstitusionalitas Model Pengisian Jabatan Wakil Kepala Daerah Dalam Penyelenggaraan Pemilihan Kepala Daerah (Pilkada). *Media Iuris*, 1(2), 373. <https://doi.org/10.20473/mi.v1i2.8836>
8. Saraswati, R. (2010). Aplikasi Calon Perseorangan Sebagai Kepala Daerah Dalam Penyelenggaraan Pemerintahan Di Daerah. *Masalah-Masalah Hukum*, 1, 359–365.
9. Sarkawi. (2015). Kewenangan Daerah Otonom Dalam Menjalankan Fungsi Pemerintahan Di Indonesia. *Jurnal Hukum Jatiswara*, 30(3), 493–512.
10. Sonata, D. L. (2014). Metode Penelitian Hukum Normatif Dan Empiris : Karakteristik Khas Dari Metode. *Fiat Justisia Jurnal Ilmu Hukum*, 8(1), 15–35.
11. Sugianto, B. (2017). Analisis Yuridis Hubungan Pemerintah Daerah dan Dewan Perwakilan Rakyat Daerah Menurut UU Nomor 23 Tahun 2014. *Solusi*, 15(3), 343–358.
12. Sugiarto, A. H. (2019). Fungsi Kepala Daerah Dalam Penyelenggaraan Pemerintahan Daerah Sesuai Dengan Prinsip-Prinsip Demokrasi. *Justice Pro: Jurnal Ilmu Hukum*, 6896, 150–172.
13. Sumanto, E. (2017). Pemikiran Filsafat Politik (Studi Komperatif Al-Farabi dengan Thomas Aquinas). *El-Afkar*, 6(2).
14. Susianto. (2022). Rekonstruksi Pengaturan Pola Hubungan Kewenangan Antara Kepala Daerah Dengan Wakil Kepala Daerah Dalam Sistem Penyelenggaraan Pemerintahan Daerah [Universitas Brawijaya]. <http://repository.ub.ac.id/id/eprint/160373/diunduh>
15. Thalbah, H. (2008). *Menyegarkan Kembali Pemahaman Islam*. Unisia, XXXI(69), 273–279.
16. Yanti, Y., & Nasution, B. J. (2021). Fungsi Wakil Kepala Daerah Dalam

Menyelenggarakan Pemerintahan Daerah
Berdasarkan Undang-Undang Nomor 23
Tahun 2014 Tentang Pemerintahan Daerah.
Limbago: Journal of Constitutional Law,
1(2), 325–345.