



Authority of the Health of the Head of Population and Civil Registration of the Head of Regulation by Law Regulation

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Abstract

Department of Population and Civil Registration is one of the Regional Service which is part of the Regional Apparatus that has the task of carrying out Regional Government Affairs and Assistance Tasks in the field of Population and Civil Registration. The purpose of this paper is to analyze the arrangements for the authority of the appointment of heads of population and civil registration according to legislation, and the implementation of the appointment of the Head of the Population and Civil Registration Service. Research methods, types of normative legal research with regulatory approaches, conceptual approaches, and case approaches, using primary legal materials, secondary legal materials and tertiary legal materials. Legal materials obtained are processed and analyzed prescriptively normatively. Conclusion, there is a conflict of authority setting norms for the appointment of the Head of the Population and Civil Registration Service in force in Indonesia which results in juridical defects of State Administrative Decrees issued by officials deemed unauthorized, legal products in the form of decrees issued by unauthorized officials must be revoked and declared invalid as stipulated in Law No. 30 of 2014 concerning Government Administration.

Keywords: Authority; Appointment; Head of Population; Civil Registry Service

Introduction

Indonesia is a unitary state in the form of a republic as explained in Article 1 Paragraph 1 of the 1945 Constitution which means a single state, in carrying out activities as well as in being managed by a government which is a unitary step, both central and regional governments (Sudjiono, 2003).

Relations between the central government and the regional government have several views that define the relationship between the two. For Marxists, the central government and regional governments do not need to be separated. While for the liberalist group, the relationship between the center and the region must be seen as between 'polity'. Therefore the term that is more accurately used is the relationship between "national polity" and "local polity" (Syamsudin, 2007).

Power lies in the central government and the central government has the authority to give up some of its power to the regions based on the principle of regional autonomy (Miriam, 2008). In implementing regional autonomy, regional governments will be assisted by regional instruments to run the government.

Department of Population and Civil Registration (Dukcapil) is one of the Regional Service which is part of the Regional Apparatus that has the task of carrying out Regional Government Affairs and Assistance Tasks in the field of population and civil registration, led by a Head of Service who is under and responsible to the Regent through the Regional Secretary. Article 65 Paragraph 1 of Law No. 23 of 2014 concerning Regional Government where the Regional Head has the authority to regulate the affairs of population and civil records because it concerns government affairs in the region. Paragraph 7 of Law No. 5 of 2014 concerning the State Civil Apparatus (ASN), Article 73 is also explained the authority of the Regional Head in transferring the ASN in his area. This has also been explained in Article 8 of the Minister of Home Affairs Regulation (hereinafter abbreviated as Permendagri) No. 119 of 2017 concerning Appointment and Dismissal and Main Tasks of Civil Registration Officers and Registration Officers state that the appointment of civil servants to become PPS (Civil Registration Officers) is determined by Decree of the Regent/Mayor or Governor's Decree for the Special Capital Region of Jakarta.

More specifically in the matter of the appointment and dismissal of Structural Officials in the work unit that handles population administration and civil registration carried out by the Minister of Home Affairs (Mendagri), as mandated in Article 83 A paragraph (1) and (2) Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration, in Article 2 Permendagri No. 76 of 2015 concerning Appointment and Dismissal of Officials at Work Units Handling Population Administrative Affairs in the Provinces and Districts/Cities mentioning that the Minister has the authority to appoint and dismiss Officials at Work Units handling Population Administration affairs in provinces and districts / cities.

Based on the application of these norms, there is a conflict of norms regarding the regulation of things that are related to the authority in the appointment and dismissal of structural officials in work units that handle the Population Administration. This results in juridical defects in one of the legal products issued by the regional head and the ministry. The formulation of the problem in this paper is, how the arrangement of authority for the appointment of the Head of the Population and Civil Registration Service according to the laws and regulations, and the implementation of the appointment of the Head of the Population and Civil Registration Service.

Research Methods

The type of research used is normative research using the regulatory approach, conceptual approach, and case approach. Using primary legal materials, secondary legal materials and tertiary legal materials. Legal materials obtained are processed and analyzed prescriptively normatively.

Result and Discussion

1. Arrangement of Authority for Appointment of Head of Population and Civil Registration Services according to Legislation

Etymologically the notion of regional autonomy in the Large Indonesian Language Dictionary (KBBI) means the rights, authority, and obligations of the region to regulate and

manage their own household in accordance with the applicable laws and regulations (Language Center of the Ministry of National Education, 2001). The definition of autonomy in a narrow sense can be interpreted as independent, whereas in a broader sense it is interpreted as empowered. Regional autonomy thus means the independence of an area in terms of making and making decisions about the interests of the region itself (Ubedilah, 2000).

As explained in Article 1 number 6 law No. 23 of 2014 concerning Regional Government that Regional Autonomy is the right, authority and obligation of autonomous regions to regulate and manage Government Affairs and the interests of the local community in the system of the Unitary State of the Republic of Indonesia. This authority is then strengthened in Article 65 Paragraph 1 Letter a of Law No. 23 of 2014 which explains that a regional head has the task of leading the implementation of Government Affairs which are the authority of the Region based on the provisions of legislation and policies stipulated with the DPRD.

The process of appointing the Head of the Population and Civil Registration Service in the area in the context of mutation, demotion and promotion is a form of regional government authority in implementing regional autonomy. This is an essential form of regional autonomy where the region is able to empower the Human Resources in its area to occupy important positions to help drive the government in the area.

Article 73 of Law No. 5 of 2014 concerning ASN explicitly explains that the authority in carrying out Civil Servants Mutation in one Central Agency or Regional Agency is carried out by the Personnel Development Officer in this case is the head of the Region. Article 8 Permendagri No. 119 of 2017 concerning Appointment and Dismissal and Main Tasks of Civil Registration Officers and Registration Officers state that the appointment of civil servants to become PPS (Civil Registration Officers) is determined by Decree of the Regent/Mayor or Governor's Decree for the Special Capital Region of Jakarta.

The norm conflict over the regulation of authority in the appointment and dismissal of structural officials in work units that handle Population Administration arises due to the existence of different legal norms when Article 83 A paragraph (1) and (2) of Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration, stipulates that Structural Officers in work units that handle Population Administration in the regions are appointed and dismissed by the Minister at the proposal of the Governor (in the Province) and at the proposal of the Regent/Mayor (at Regency/City) through the Governor. Article 2 Permendagri No. 76 of 2015 concerning Appointment and Dismissal of Officials at Work Units Handling Population Administration Affairs in Provinces and Districts/Cities states that the Minister has the authority to appoint and dismiss Officials in the Work Unit that handles Population Administration affairs in the province and regency/city either. , Administrator Position and Supervisory Position.

From the two rules, it can be said that the Regional Head of the Governor/Regent/Mayor only has the authority to propose, while the Minister carries out the authority for the appointment and dismissal of Structural Officials. The regulation is certainly very contrary to the principle of regional autonomy where the regions should have the authority to manage their respective regions, especially in the selection process for the appointment of heads of official offices, certainly autonomous regions better understand the qualifications of official head officials needed.

The legal consequences of norm conflicts related to authority in the appointment and dismissal of structural officials in work units that handle Population Administration result in

juridical defects in one of the legal products issued by an official deemed unauthorized. Because there will be different State Administrative Decisions that cause losses and escape the legal certainty value of the intent and purpose of the country's administrative decisions. Therefore, one of the Decrees (SK) issued by officials deemed unauthorized must be canceled and revoked and considered invalid. This is in line with the provisions stipulated in Law No. 30 of 2014 concerning Government Administration where Article 64 states that State Administrative Decrees can be revoked if there are defects in authority, procedures; and/substance.

2. *Implementation of Appointment of Head of the Population and Civil Registry Service*

The existence of a conflict of norms over the authority of the appointment of the Head of the Population and Civil Registry Service caused the emergence of overlapping authority and certainly very detrimental to the parties who became the intent of the State Administrative Decision. This can be seen in the case of the appointment of the Head of the Central Lombok Regency Population and Civil Registration Office. This case began in August 2018, the Acting Chief of the Population and Civil Registry Service had expired, so the position for that position was vacant. To respond to this, the Central Lombok Regency Government held a Selection Committee (Pansel) to recruit candidates for vacant officials. In accordance with the authority given to Pansel, it succeeded in recruiting and assigning 3 (three) candidates who would fill the position of Head of Central Lombok District Civil Service Service Office, namely on behalf of: 1) H. Ridwan Makruf, S.Sos; 2) H. Mutawalli, S.H; 3) Baiq Anita Nindiana, S.Sos.

The legal basis of the Pansel team appointed by the Central Lombok Regent in conducting the High Leadership Position selection is regulated in PP No. 11 of 2017 concerning Management of Civil Servants. Article 107 of this regulation states that the requirements to be appointed in the High Leadership Position of PNS are as follows: 1) having the lowest education qualification of a bachelor or diploma IV; 2) has Technical Competence, Managerial Competence, and Cultural Social Competence in accordance with the position competency standards specified; 3) have Job experience in the field of duty related to the Position that will be cumulatively occupied for at least 5 (five) years; 4) Moderate or ever occupied the position of administrator or JF intermediate level of experts at least 2 (two) years; 5) has a good track record of position, integrity and morality; 6) the highest age of 56 (fifty six) years; and 7) physically and mentally healthy.

The procedure for filling and Appointment of the High Leadership Position is regulated in Article 110 and Article 113 states that: *Article 110*: 1) The completion of the preliminary JPT is conducted openly and competitively among civil servants in accordance with the requirements referred to in Article 107 letter c; 2) The completion of the pre-registration JPT as referred to in paragraph (3) is conducted openly and competitively at the national level or between regencies/cities in 1 (one) province. *Article 113* : Filling in the JPT as referred to in Article 110 and Article 111 is carried out through stages: 1) Planning; 2) vacancy announcement; 3) application; 4) selection; 5) announcement of selection results; and 6) appointment and appointment.

In accordance with applicable regulations, Pansel has submitted the three candidates who have passed the selection to the Central Lombok Regent. The Central Lombok Regent has proposed the names of the candidates selected by the selection committee to the ASN Committee for recommendations. The names proposed were also notified to the Interior Ministry Cq. Director General of Population and Civil Registry to be appointed.

The Central Lombok Regent then issued a Decree on the Appointment of the Primary High Leaders in the Central Lombok District including the High Leadership Primary as the Head of the Central Lombok Regency Population and Civil Registration Office. In this decree the Regent established and appointed H. Ridwan Makruf, S.Sos (Number 1 from the Nomination list) as Head of the Central Lombok Duk Capil Service. There are several legal rules that become the basis of the juridical bupati of Lombok in issuing a decree to appoint the Head of the Population and Civil Registration Service.

Article 3 PP No. 9 of 2003 concerning the Authority of Appointment, Dismissal and Dismissal of Civil Servants stating that Provincial or District/City Personnel Development Officers determine the appointment of Candidates for Regional Civil Servants in their neighborhoods;

Central Lombok Regent also refers to Law No. 23 of 2014 concerning Regional Government in Article 65 states that the regional head has a duty: 1) lead the implementation of Government Affairs which are the authority of the Region based on the provisions of legislation and policies stipulated with the DPRD; 2) maintain public peace and order; 3) compile and submit draft Perda on RPJPD and draft Local regulation on RPJMD to DPRD to be discussed with the DPRD, as well as compile and stipulate RKPD; 4) compile and submit draft Perda concerning APBD, draft Perda concerning changes to APBD, and draft Perda on accountability for the implementation of the APBD to DPRD to be discussed together; 5) representing the area inside and outside the court, and can appoint a legal counsel to represent him in accordance with the provisions of legislation; 6) propose the appointment of deputy regional heads; and 7) carry out other duties in accordance with the provisions of the legislation.

Article 73 of Law No. 23 of 2014 concerning ASN also gives authority to the Regional Head to transfer civil servants in his government environment in this case the Central Lombok Regent who is ex-Officio domiciled as the Officer of the Personnel Development. As Officer of Staffing, the Regent of Central Lombok has the right to transfer civil servants based on ratios and certain considerations as well as not violating the rules for transferring civil servants in their working area.

Similarly, as explained in Article 8 Permendagri No. 119 of 2017 concerning Appointment and Dismissal and Main Tasks of Civil Registration Officers and Registration Officers state that the appointment of civil servants to become PPS (Civil Registration Officers) as referred to in Article 5 and Article 7 is determined by Decree of the Regent / Mayor or Governor's decision for the Special Capital Region Province Jakarta.

Some of the rules above clearly state that regional officials in this case the Central Lombok Regent are officials who are authorized to appoint and stop the Head of the Population and Civil Registration Service. This is also in line with the values of the principle of regional autonomy where the regions have the right and authority to manage their own areas, including in filling the needs of ASN formation. The ASN Committee has sent a letter to the Central Lombok Regent whose contents include, among other things, that the Minister of Home Affairs has issued Decree Number 821.22.8355 of 2018 concerning the Appointment of the Primary High Leaders as Head of the Central Lombok Population and Civil Registration Office. The decision stipulates Baiq Anita Nindiana, S.Sos. (Candidate No. 3 as Acting Head of the Central Lombok Regency Population Office). The legal basis used by the Minister of Home Affairs issued the decree as explained in Article 83 A paragraph (1) and (2) Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration as follows: 1) Structural officials in work units that handle Population Administration in the province are appointed and dismissed by

the Minister at the proposal of the Governor; 2) Structural officials in work units that handle Population Administration in regencies/cities are appointed and dismissed by the Minister on the proposal of the Regent/Mayor through the Governor.

Article 2 Permendagri No. 76 of 2015 concerning Appointment and Dismissal of Officials in the work unit that handles the affairs of Population Administration in the Province and District/City states that the Minister has the authority to appoint and dismiss Officials in the Work Unit that handles Population Administration affairs in the provinces and districts / cities. This is then confirmed in article 6 which states that the Primary High Leadership Officer in the work unit that handles Population Administration Affairs in the district/city is appointed and dismissed by the Minister on the proposal of the regent mayor through the Governor. Thus there are 2 (two) Decrees concerning the appointment of the Head of the Dukcapil Office issued by different government officials with different personnel. This certainly raises the problem, who is authorized to appoint and dismiss the Primary High Official (Head of the Dukcapil Office).

Regarding the norm conflict of the appointment of the Head of the Dukcapil Service Office, according to legal theory, this must be returned to the principle. Permendagri which is the legal basis that applies in contravention of the law so that the solution if returned to the principles of law applies the principle of superior *lex legion inferior derogat* which means higher regulations rule out the low (hierarchical principle) (Marzuki, 2014). In addition to contradicting the law above, Permendagri No. 76 of 2015 concerning Appointment and Dismissal of Officials at Work Units Handling Population Administrative Affairs in Provinces and Districts/Cities also contradict Article 8 of Permendagri No. 119 of 2017 concerning Appointment and Dismissal and Principal Tasks of Civil Registration Officers and Registration Officers, so that because it is also contrary to similar rules, if returned with the principle applies the principle of *Lex Posterior Legi Priori* Priority, namely in equal regulations, the most just crippling old regulations (Mertokusumo, 2009).

If the Ministry of Home Affairs continues to inaugurate the Population Administration Officer himself without regard to the Regent's proposal on the basis of the Permendagri, then the action has been ascertained to contradict the higher provisions, therefore the legal product issued by the Minister of Home Affairs is legally flawed so it can be ruled out. According to the author, one of the main reasons why the authority of the Head of District Head of Sub-dept. Was supposed to be given to the regional head in this case the Central Lombok Regent is that every process of appointing a High Leadership Position must be through a rigorous selection process through the panel team directly appointed by the head of the region. So in this case, the regional head better understands who is fit to occupy the High Leadership Position that is in the service in the area in accordance with the formation and needs.

Thus, both in terms of legal theory and the legal bases that apply, the authorities in the appointment and dismissal of high-ranking positions should be the heads of the regions concerned.

Conclusion

Based on the results of the study, it was concluded that: 1) There is a conflict in the regulatory norms for the appointment of the Head of the Population and Civil Registration Service in force in Indonesia which results in a juridical defect in one of the State Administrative Decrees issued by officials deemed unauthorized. 2) Legal products in the form of Decrees issued by officials who are not authorized must be revoked and declared invalid as stipulated in Law No. 30 of 2014 concerning Government Administration.

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