

## AUTHORITY OF EXECUTING REGIONAL HEAD DUTIES ACCORDING TO LAW NUMBER 23 OF 2014

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### ABSTRACT

The appointment of the acting Regional Head can cause problems in the aspect of State Administrative Law. Filling the position of Acting Regional Head is regulated in Article 65 paragraph (1) and paragraph (2) of Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government. The duties and authorities of the Regional Head are complemented by obligations that must be carried out by the Regional Head as regulated in Article 67 of Law Number 23 of 2014 concerning Regional Government. These duties and authorities cannot be carried out if the Regional Head is serving a prison term or is temporarily incapacitated so that it can be understood that the duties and authorities obtained by the Regional Head are very decisive in the proper running of Regional Government. The limitations of the Acting Regional Head's authority in carrying out his duties as Regional Head are derived from the mandate authority, where the Acting Regional Head's authority is limited to carrying out authority in the form of policies that have been determined by the definitive Regional Head in Regional Government because his position is only as a temporary official who replaces the vacancy of the Regional Head. The Acting Regional Head does not have the authority to issue decisions and/or take actions that have legal implications for the Regional Government organization, personnel, permits, budget allocation, and other strategic policies without first coordinating with and obtaining written approval from the Minister of Home Affairs, the official who appointed the Acting Regional Head.

### 1. Introduction

Indonesia, as a nation, has a constitution called the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). The state framework and system of government of the Republic of Indonesia are regulated in the 1945 Constitution, which affirms that Indonesia is a unitary state in the form of a republic. It also emphasizes that Indonesia is a state based on the rule of law with popular sovereignty. Therefore, Indonesia is a constitutional state based on democracy and in the form of a republic.

Given Indonesia's vast territory, with its vast geographical area and diverse socio-cultural conditions, the 1945 Constitution stipulates the need for regional



governments. Article 18 of the 1945 Constitution stipulates that the Indonesian state is divided into large regions (provinces) and small regions (regencies/cities) that are autonomous, taking into account the origins of the respective regions as their special characteristics. Therefore, within the unitary system of government of the Republic of Indonesia, the existence of regional governments is a constitutional provision that must be implemented. The existence of regional governments is a provision established by the constitution and must be implemented within the governmental system of the Republic of Indonesia. The role of a Regional Head is highly strategic, given that the Regional Head is a key component for the success of national development and serves as a subsystem of national or state governance. The Regional Head is the figurehead or manager who determines the effectiveness of achieving the goals of the Regional Government organization. The synergistic governance process in the region is determined by the extent of the role played by the leader or manager. In other words, the direction and objectives of the Regional Government organization are determined by the abilities, competencies, and capabilities of the Regional Head, which are their obligations and responsibilities.

The term of office of a Regional Head is limited by statutory regulations. Indonesia already has a regulation that stipulates that a Regional Head can serve as head of the Regional Government for five years, after which a vacancy occurs due to the expiration of the term stipulated by statutory regulations, and may be renewed for the same period. After that, the Regional Head will be replaced simultaneously throughout Indonesia to ensure budget efficiency during the Regional Head Elections (Pilkada).

## 2. Research Method

This research is descriptive in nature, meaning it describes the object of study, and is investigated by describing applicable laws and regulations in relation to legal theories and the practice of implementing them. The type of research used is empirical juridical, which examines applicable legal provisions and what actually occurs in society. Empirical juridical research involves conducting interviews. The method used in this research is a normative method. In relation to the research method used, the author conducted this by examining regulations, legislation, court decisions, circulars and jurisprudence, legal magazines, legal theories, and the opinions of leading legal scholars, which constitute secondary data.

## 3. Research Results And Discussion

The provisions of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors state that Regional Heads and/or Deputy Regional Heads



who are still actively serving and running again in the Regional Head election process for a second term, or those referred to as incumbents, whether nominated and/or running for office, must take leave without state support, which prevents the Regional Head from carrying out his or her duties and authorities as usual.

Based on Article 70 paragraph (3) letter a of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors, pairs of candidates for Regional Heads who are still actively serving as Governors, Regents, and Mayors who are running for reelection must fulfill the requirements for taking unpaid leave during the Regional Head election process or campaign period. This is reaffirmed by the provisions of Minister of Home Affairs Regulation Number 1 of 2018 concerning Unpaid Leave for Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors, which explains that Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors who are running for reelection must fulfill the following requirements during the campaign period:

1. Take unpaid leave;
2. Are prohibited from using facilities related to their positions.

Other conditions that prevent a Regional Head from carrying out his duties continuously or who is permanently incapacitated are regulated in Law Number 23 of 2014 concerning Regional Government, namely:

1. The regional head and/or deputy regional head shall resign due to:
  - a. Death;
  - b. At their own request;
  - c. Dismissal.
2. The regional head and/or deputy regional head shall be dismissed as referred to in paragraph (1) letter c due to:
  - a. The end of their term of office;
  - b. Being unable to carry out their duties continuously or being permanently incapacitated for 6 (six) consecutive months;
  - c. Being declared to have violated the oath/promise of office of the regional head/deputy regional head;
  - d. Not carrying out the obligations of the regional head and deputy regional head as referred to in Article 67 letter b;
  - e. Violating the prohibitions for regional heads and deputy regional heads as referred to in Article 76 paragraph (1), except letters c, i, and j;
  - f. Committing a disgraceful act;
  - g. Being given a task during a certain term of office by the President that is prohibited from being held concurrently by statutory provisions;





- h. Using false documents and/or information as required for nomination as regional head/deputy regional head based on evidence from an authorized document-issuing institution;
- i. Receiving a sanction of dismissal.

The provision referred to in Article 78 paragraph (2) letter b, "unable to carry out duties continuously or permanently impeded," refers to suffering from an illness that results in physical or mental inability to function normally as intended, as evidenced by a certificate from a competent doctor and/or whose whereabouts are unknown. The term "committing reprehensible acts" referred to in letter f includes, among other things, gambling, drunkenness, drug use/dealing, adultery, and other acts that violate morality. Based on the provisions of Article 78 paragraph (2) of Law Number 23 of 2014 concerning Regional Government, it can be concluded that the meaning of "permanent impediment" is:

1. Unable to carry out duties continuously or permanently impeded for 6 (six) consecutive months;
2. Suffering from an illness that results in physical or mental inability to function normally, as evidenced by a certificate from a competent doctor;
3. The whereabouts of the official concerned are unknown.

The provisions of these laws and regulations will result in a vacancy in the position of Regional Head. This vacancy will impact the running of Regional Government, necessitating the appointment of a replacement official for the Regional Head who is currently unable to carry out his duties due to leave without state support or due to a permanent disability to ensure the smooth running of government. An Acting Official is an official who temporarily holds a position due to the incapacity of the previous official or legal issues that prevent him from carrying out his duties. An Acting Official is appointed by a higher-level official and generally holds a structural position within the state administration, such as the head of a government institution. However, this term is also used for public positions such as Governor or Regent/Mayor.

The word "official" means a person who holds a position or a rank, so it is understandable that a person currently holding a position is called an official. Meanwhile, a person who only holds a position temporarily due to being unable to carry out their duties and functions is called an acting official, or better known as an Acting Head. A person who carries out the duties of an office temporarily, namely an Acting Head of the Region, is someone assigned to carry out the duties of the Regional Head temporarily due to being unable to carry out their duties. If a definitive official is unable to carry out their duties, then the government official has the right to use the authority to make decisions or take action, namely appointing a government official who meets the requirements as a



daily executor or acting official to carry out the duties of the official who is permanently unable. The term "acting official" refers to Article 14 paragraphs (1) and (2) of Law Number 30 of 2014 concerning Government Administration. This provision states that government agencies and/or officials receive a mandate if assigned by a higher government agency and/or official and are carrying out routine duties. The routine executors referred to are the daily executors who carry out the duties of definitive officials who are temporarily unable to perform their duties, and the executors who carry out the duties of definitive officials who are permanently unable to perform their duties.

Law Number 30 of 2014 concerning Government Administration does not explain in more detail the meaning of temporary incapacity for daily executors. Therefore, the definition of a definitive official being temporarily unable to perform their duties can be found in BKN Decree 26/2016, point 3 (a): "If an official is unable to perform his or her duties for at least 7 (seven) working days, to ensure the smooth execution of his or her duties, the government official above him or her must appoint another official within his or her area as the daily executor." This decree explains that temporary incapacity can occur if an official is unable to perform their duties for a period of 7 (seven) working days and a daily executor is appointed. These reasons include: a short-term illness that does not affect physical or mental disability, being on a business trip, or performing the Umrah or Hajj pilgrimage. A Regional Head who is unable to carry out his or her duties and obligations can disrupt the implementation of regional government. Therefore, to maintain the stability of regional government administration, it is necessary to appoint an acting Regional Head who will temporarily carry out the routine duties of the definitive official.

The provisions of Law Number 23 of 2014 concerning Regional Government also seem to suggest the existence of an acting official to replace a Regional Head who is unable to carry out his or her duties. Article 65 paragraphs (4), (5), and (6) of Law Number 23 of 2014 concerning Regional Government can serve as initial guidance for appointing an acting Regional Head. Through these provisions, it is understood that in the event of a situation where a Regional Head is temporarily unable to perform his or her duties, there are two different mechanisms related to the appointment: one official who carries out the duties and authorities of the Regional Head and the other official who carries out the day-to-day duties of the Regional Head.

The Deputy Regional Head carries out the duties and authorities of the Regional Head and then carries out the duties known as the Acting Regional Head. This can be interpreted as an Acting Regional Head. This situation relates to the position of deputy regional head, who is also directly elected by the people.



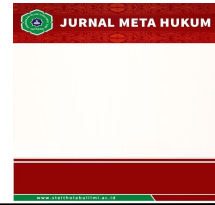


Therefore, the Deputy Regional Head has the authority to act as an interim official, replacing the Regional Head who is currently unable to perform his duties. The Acting Regional Head position occurs because the Regional Head is unable to carry out his duties, resulting in a vacancy. This occurs due to the provision of a leave period in the Regional Head election process for candidates for regional head and/or deputy head who are running again in the election process and are unable to carry out their duties due to death, resignation from office, or legal issues. Therefore, an official is needed to fill the vacancy so that the wheels of Regional Government continue to run smoothly as they should.

If the definitive official of the Regional Head is unable to carry out his duties, government officials have the right to use their authority in making decisions and/or taking actions aimed at delegating and granting mandates in accordance with statutory provisions, namely appointing an acting official to carry out the duties of the definitive official who is currently unable to carry out his duties. The government official referred to in this provision is the Minister of Home Affairs, whose position is stated in Article 25 paragraph (4) of Law Number 23 of 2014 concerning Regional Government, which states that: "In carrying out general government affairs, the Governor is responsible to the President through the Minister, and the Regent/Mayor is responsible to the Minister through the Governor as a representative of the Central Government." Referring to Article 1 number 44 of the provisions of Law Number 23 of 2014 concerning Regional Government, it is clear that the Minister referred to here is the Minister who organizes domestic government affairs, namely the Minister of Home Affairs.

To ensure that the wheels of government continue to run, an acting official is needed to carry out the duties of the Regional Head who is currently unable to carry out his duties. To fill the vacant position of a Regional Head running for reelection, in accordance with Article 4 paragraph (1) of Home Affairs Ministerial Regulation 1/2018, amending Home Affairs Ministerial Regulation 74/2016, an Acting or temporary official is appointed, namely the Acting Governor, Acting Regent, and Acting Mayor until the end of the designated campaign leave period. Through Home Affairs Ministerial Regulation 1/2018, the Ministry of Home Affairs changed the nomenclature of the term "acting Regional Head" from a substitute public official to "acting Regional Head." This change in terminology was made because the Acting position will only be attached to the Deputy Regional Head, considering the equal position resulting from the popular election process. The provisions of this regulatory amendment open up the criteria for a replacement official who can fill a vacant leadership position in the region if the Regional Head and Deputy Regional Head pair run for reelection for the same term, so that it can be filled by another official in accordance with





statutory provisions. In accordance with the provisions of Home Affairs Ministerial Regulation 1/2018 Article 4 paragraph (1) or previously also regulated in Article 4 paragraph (1) of the provisions of Home Affairs Ministerial Regulation 74/2016, while the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor are unable to carry out their duties due to Leave Without State Pay, a temporary official or Acting Governor, Acting Regent, and Acting Mayor will be appointed until the end of the campaign period in the Regional Head election process.

Regional heads who are unable to carry out their duties in accordance with the provisions of Article 78 of Law Number 23 of 2014 concerning Regional Government, to fill the vacant position in accordance with the provisions of Article 86 paragraph (5) of Law Number 23 of 2014 concerning Regional Government, it is explained that if the Regional Head and/or Deputy Regional Head are dismissed from their positions, the President will appoint an acting Governor upon the proposal of the Minister, and the Minister will appoint an acting Regent/Mayor upon the proposal of the Governor as a representative of the central government until there is a court decision that has permanent legal force. Further provisions regarding the requirements and term of office for acting regional heads will be regulated in government regulations. Article 4 of Minister of Home Affairs Regulation Number 1 of 2018 concerning Amendments to Minister of Home Affairs Regulation Number 74 of 2016 concerning Leave Without State Assistance explains that those who fill the position of acting or acting regional head are:

1. The acting or acting governor shall be a senior high-ranking official or equivalent within the central government or provincial government.
2. The acting or acting regent/mayor shall be a senior high-ranking official within the provincial government or the Ministry of Home Affairs.

The Acting Governor as referred to in Article 4 paragraph (2) will be appointed by the Minister. The Acting Regent/Mayor as referred to in Article 4 paragraph (3) will be appointed by the Minister upon the recommendation of the Governor. An explanation of these high-ranking officials can be referred to in Article 19 concerning the State Civil Apparatus (Law Number 5 of 2014). Acting governors or acting governors will be appointed by the minister, and acting regents/mayors will be appointed by the minister upon the governor's recommendation, except in cases of implementing national strategic interests, in which case acting regents or acting regents/mayors may be appointed by the minister without the governor's recommendation. The appointment of replacement governors, regents, and mayors is determined by a Ministerial Decree.





If the elected regional head, namely the governor, regent, or mayor, is permanently incapacitated, the deputy governor, deputy regent, or deputy mayor will be inaugurated as regional head for a five-year term if this occurs at the beginning of the term. If the regional head is incapacitated due to a criminal offense (legal), based on the principle of the presumption of innocence, the regional head cannot be declared guilty if the judge's verdict has not yet become legally binding. Because the legal process takes a long time, and the term of office of a regional head is only five years, to prevent the wheels of government from running smoothly in the regional government, the deputy regional head is appointed as acting or acting governor. The Acting Regional Head replaces the Regional Head and carries out the duties of the Regional Head after six months of legal proceedings, appointed and determined by the Minister of Home Affairs.

The Regional Head is dismissed by the President without recommendation from the Regional People's Representative Council (DPRD) if found guilty of a crime punishable by imprisonment of at least 5 (five) years or more based on a court decision. He is replaced by the Deputy Regional Head until the end of his term. The court decision in question is the court decision of the first instance, namely the District Court. State administrators must be professional in their field of expertise and the main duties and functions they must perform, as this will support good service delivery in the process of state administration in accordance with the principles of good governance. All positions in government administration are structured to fulfill the duties and functions of each government official.

A good government structure will create effective and efficient services in accordance with the duties and functions assumed by the office holder. Several social, political, and legal conditions often hamper state administrators or apparatus, resulting in vacancies. Vacancies resulting from the absence of an office holder to carry out the duties and functions of their respective positions result in dysfunction. tasks that should be carried out within the framework of governance and public services to the community. This situation can negatively impact government performance in terms of good governance, which aims to create public services in accordance with statutory provisions. Vacant positions left by structural officials clearly leave behind the duties and functions inherent to those positions, resulting in ineffective government administration in line with its objectives.

The current situation is the large number of vacant positions, resulting in reduced government performance in both public services and governance. This is due to the many officials who are caught up in social, political, and legal issues that prevent the incumbent from carrying out their duties and functions as public





officials. Vacant positions are also caused by the absence of officials to carry out their duties and functions, as their duties and responsibilities end within the government structure. Given these conditions, the government must find a solution to address the issue of vacant positions. To prevent disruptions to public services and state administration, there must be a state apparatus to carry out the duties and functions of the positions vacated by the incumbent. Filling vacant positions can be done by filling certain public officials with existing state apparatus. These positions can be assigned in accordance with existing regulations or laws to ensure the continuity of state administration. Filling vacant positions can be done by appointment or delegation, as needed and according to statutory regulations. In accordance with applicable regulations and laws, positions filled by other public officials can be public officials, daily task executors, and acting officials.

#### 4. Conclusion

Filling the position of Acting Regional Head is regulated in Article 65 paragraphs (1) and (2) of Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government. The duties and authorities of the Regional Head are complemented by obligations that must be carried out by the Regional Head, as stipulated in Article 67 of Law Number 23 of 2014 concerning Regional Government. These duties and authorities cannot be carried out if the Regional Head is serving a prison sentence or is temporarily incapacitated. Therefore, it is understood that the duties and authorities granted by the Regional Head are crucial to the proper running of Regional Government. The Acting Regional Head's authority in carrying out his or her duties as Regional Head stems from his or her mandate, whereby the Acting Regional Head's authority is limited to implementing policies established by the definitive Regional Head within the Regional Government, as his or her position is merely a temporary official filling a vacant Regional Head position. The Acting Regional Head does not have the authority to issue decisions and/or take actions that have legal implications for the Regional Government organization, personnel, permits, budget allocations, and other strategic policies without first coordinating with and obtaining written approval from the Minister of Home Affairs, the official who appointed the Acting Regional Head.

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