



## Implications of governor election on the authority of regional personnel arrangement in realizing good governance in Indonesia

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### Abstract

The Governor has full power in managing staff who will support the implementation of his duties, and also has the right to expel employees who are deemed less competent or do not support his policies. The discretionary authority granted by Law Number 30 of 2014 concerning Government Administration is often misinterpreted because in practice promotion and transfer of positions often escape this norm and are loaded with conflict of interest pressures as a result of the Governor Election. So the question is How should the Governor's authority in staffing arrangements during the gubernatorial election period to realize good governance as legal reform?

**Keywords:** Governor, election, good governances

### Introduction

Referring to the provisions as regulated in Article 18 of the 1945 Constitution of the Republic of Indonesia stipulates that The Unitary State of the Republic of Indonesia is divided into provinces and the provinces are divided into regencies and cities, each of which has a regional administration, which is regulated by law. And furthermore it is also regulated that provincial, regency and city regional governments regulate and manage their own government affairs according to the principles of autonomy and co-administration.

The relationship between autonomy is often conceptualized in the context of decentralization, which is generally interpreted as a process of transferring or sharing authority from the central government to regional governments. In this situation, the concept of local government can have two different meanings. First, as a regional government that focuses on deconcentration aspects. Second, as regional governments that have their own autonomy in managing their affairs <sup>[1]</sup>.

Law Number 23 of 2014 concerning Regional Government does not contain provisions regarding regional head elections. Regional head elections are determined separately in the law. Regional head elections are regulated in Law Number 6 of 2020 concerning the Stipulation of Government Regulations in lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors Become Laws Become Laws,

In connection with the implications of the election of the governor on the authority of the Governor in managing regional staffing, with the emergence of problems at the legal dogmatic level in the form of regulations regarding competency and professional aspects in order to realize Good Governance and realize quality, efficient and effective public services within the framework of the Governor's authority regarding regional staffing arrangements the facts are not yet clear and firm. This problem leads to problems in

the scope of legal philosophy related to the principle of regional heads having strong and legitimate capacity, integrity and commitment in the eyes of the community and the principle of legal certainty <sup>[2]</sup>.

Good governance (Good Governance) is one of the important objectives in the development of a country. One important aspect in achieving good governance is an efficient and transparent staffing arrangement. In this context, the role of the governor as executive leader at the provincial level has a very significant role in managing government apparatus and ensuring the implementation of the principles of good governance. The election of governors as a manifestation of democracy also has an impact on the governor's authority in staffing arrangements. Therefore, the ideal legal construction of the regulation of the governor's authority in staffing arrangements during the gubernatorial election period becomes relevant in realizing good governance.

In the regional work unit (SKPD) organizational structure, selection to appoint structural officials should involve an objective assessment process. Regional heads have full rights in appointing structural officials, which can be seen through the establishment of a Team for Position and Rank Advisory Board (Baperjakat). This team is tasked with identifying employees who meet the requirements for certain positions and submit recommendations to regional heads. As regional heads, they have the authority to approve or reject proposals from the Baperjakat team. This kind of situation sometimes results in discretionary judgments on regional head policies, especially when differences of opinion or debate arise. Governors, Regents, or Mayors have absolute rights in managing staff who will assist in carrying out their duties,

The discretionary authority granted by Law no. 30 of 2014 concerning Government Administration is often misinterpreted, because in practice, promotions and transfers of positions often violate these norms and there is a high level of pressure and conflict of interest arising from the Governor Election. In an effort to achieve positions and development opportunities as Civil Servants, individuals are

faced with competition which is often unprofessional and this phenomenon is now common in the bureaucracy. The regional head's authority is a legal authority that gives him the right to defend his policies through the use of discretion as a manifestation of these rights. Therefore, when there is a debate about the transfer of structural officials, external parties cannot intervene in regional head decisions. In several regions, until now there is still uncertainty regarding the factors considered in the appointment of Civil Servants for structural positions. For example, the appointment of Echelon II to IV officials has not fully complied with the applicable legal provisions, such as a discrepancy between the level of education and the new position, or the difference in experience in the previous position with the new position. In fact, there are Civil Servants who have attended leadership training, but have yet to get a suitable position. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is In several regions, until now there is still uncertainty regarding the factors considered in the appointment of Civil Servants for structural positions. For example, the appointment of Echelon II to IV officials has not fully complied with the applicable legal provisions, such as a discrepancy between the level of education and the new position, or the difference in experience in the previous position with the new position. In fact, there are Civil Servants who have attended leadership training, but have yet to get a suitable position. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is In several regions, until now there is still uncertainty regarding the factors considered in the appointment of Civil Servants for structural positions. For example, the appointment of Echelon II to IV officials has not fully complied with the applicable legal provisions, such as a discrepancy between the level of education and the new position, or the difference in experience in the previous position with the new position. In fact, there are Civil Servants who have attended leadership training, but have yet to get a suitable position. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is In several regions, until now there is still uncertainty regarding the factors considered in the appointment of Civil Servants for structural positions. For example, the appointment of Echelon II to IV officials has not fully complied with the applicable legal provisions, such as a discrepancy between the level of education and the new position, or the difference in experience in the previous position with the new position. In fact, there are Civil Servants who have attended leadership training, but have yet to get a suitable position. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is Until now there is still uncertainty regarding the factors considered in the appointment of Civil Servants for structural positions. For example, the appointment of Echelon II to IV officials has not fully complied with the applicable legal provisions, such as a discrepancy between the level of education and the new position, or the difference in experience in the previous position with the new position. In fact, there are Civil Servants who have attended leadership training, but have yet to get a suitable position. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is Until now there is still uncertainty regarding the factors considered in the appointment of Civil Servants for structural positions. For example, the appointment of Echelon II to IV officials has not fully complied with the applicable legal provisions, such as a discrepancy between the level of education and the new position, or the difference in experience in the previous position with the new position. In fact, there are Civil Servants who have attended leadership training, but have yet to get a suitable position. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is

status causes them to lose their positions and also do not have clear job roles.[4] So the question is in the appointment of Echelon II to IV officials, they are not fully in accordance with the applicable legal provisions, such as a mismatch of education level with the new position, or differences in experience in the previous position with the new position. In fact, there are Civil Servants who have attended leadership training, but have yet to get a suitable position. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is in the appointment of Echelon II to IV officials, they are not fully in accordance with the applicable legal provisions, such as a mismatch between the level of education and the new position, or the difference in experience in the previous position with the new position. In fact, there are Civil Servants who have attended leadership training, but have yet to get a suitable position. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is but haven't got the right job yet. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is but haven't got the right job yet. In addition, the existence of officials who have "non-job" status causes them to lose their positions and also do not have clear job roles<sup>[4]</sup>. So the question is How should the Governor's authority in staffing arrangements during the gubernatorial election period to realize good governance as legal reform?

#### **The rule of law and good governance in staffing arrangements**

The elements that must exist in a rule of law state are as follows: There is recognition and protection of basic human rights, the State is based on the understanding of the separation of powers, the government is organized based on the rule of law or law and there is a state administrative court tasked with handling violations of the law by the government<sup>[5]</sup>.

The idea of a rule of law in its journey experienced ups and downs and reappeared in the 19th and early 20th centuries, namely with the emergence of the concept of *rechstaat* from *Freidrich Julius Stahl* inspired by *Immanuel Kant*, and the concept of rule of law from *AV Dicey*. The two concepts were born from different legal systems. The concept of *rechstaat* comes from the Continental European legal system, while the concept of rule of law was born from the Anglo-Saxon legal system<sup>[6]</sup>. The emergence of the concepts of *Rechtsstaat* and Rule of Law in the 19th and early 20th centuries represented an important turning point in the evolution of the rule of law notion. Although born from different legal traditions, these two concepts seek to uphold fundamental principles that protect individual rights, regulate government power, and ensure fairness in the legal system. Despite the differences in approach and implementation, the ultimate goal of these two concepts is to realize a government that is bound by law and maintains the rule of law in society.

Based on the 1945 Constitution of the Republic of Indonesia Article 1 Paragraph (1) The Republic of Indonesia is a Unitary State in the form of a Republic, then Article 18 Paragraph (1) stipulates: "The Unitary State of the Republic of Indonesia is divided into provincial areas and those provinces divided into regencies and cities, each province,

regency and city has a regional administration, which is regulated by law" <sup>[7]</sup>. The development of the rule of law doctrine, especially in Indonesia, has developed that the Republic of Indonesia is a Pancasila based state, while also acknowledging the influence of the Anglo Saxon legal system and the Continental European legal system. In this context, the characteristics of the Pancasila legal state are reflected in the embodiment of Pancasila values into laws and regulations. Therefore Pancasila as a source of law or *rechtsidee*. There is the reality of the existence of a Pancasila legal state. The real manifestation of the Pancasila legal state is the existence of Pancasila values formulated in the material of a law. However, in the reality of the form of a Pancasila legal state, it is still found that laws that have been promulgated and apply in society are contrary to Pancasila values <sup>[8]</sup>.

The term good governance is a political science term introduced in describing a democratic society. The question is, "Is it true that the term good governance is something new (if interpreted as good governance). If traced, good governance has actually been applied in governance long before. Especially if we examine the general principles of good governance. The meaning of good character in the context of administering government implies decency and appropriateness which in foreign terms is called *behoorlijk* like *behoorlijk bestuur* <sup>[9]</sup>. The implementation of the general principles of good governance as the norm in the administration of regional government will further realize the function and objective of real state administrative law. In addition, the general principles of good governance can be used as an instrument for judges of the State Administrative Court in considering the functions of State Administrative Agencies or Officials, both at the central and regional levels, in starting state administration work. The principles of good governance in the administration of regional government reflect the synergy between local government, the private sector and the community. One of its components is clean government (Clean Government) in the implementation of governance in the regions cannot be separated from the discussion of good governance (Good Governance) <sup>[10]</sup>.

#### **The ideal legal construction of the governor's authority arrangement in personnel arrangement during the governor election period to realize good governance**

The paradigm shift in the implementation of personnel administration in Regional Government has the potential to impact the existing structural, governance and human resource systems. This also relates to the process of procuring and appointing Regional Civil Servants. Therefore, the Regional Head needs to rearrange the regional organizational structure with a rational and realistic approach, according to needs, through the use of more effective and efficient tools, with a focus on improving services to the community. This effort also includes the provision of facilities that support superior service to the community. In terms of management, determination of formation, appointment, transfer and dismissal of Regional Civil Servants is part of the responsibility of the government which has a shared dimension, namely the central government and local government. Therefore, in every aspect that is joint in nature, there will always be a part that becomes the authority of the Government, a part that is given to the Provincial level, and another part that is given

to Regency/City Governments. This indicates that every aspect that is shared will be regulated proportionally between various levels of government <sup>[11]</sup>.

In an effort to realize good governance through an ideal legal construction of the regulation of governor's authority in staffing arrangements during the gubernatorial election period, several principles and steps can be taken

**1. Transparency and participation:** It is important for the governor to involve the public, including employees, in the staffing process. Mechanisms such as public consultation and open dialogue can ensure that decisions are made considering multiple perspectives. By applying the principles of transparency and participation in staffing arrangements, governors can ensure that policies taken are more just, accountable, and responsive to the needs of society and employees. In addition, this approach can also help build trust between the government and its citizens, as well as improve the overall quality of public services.

**2. Based on merit criteria:** Staffing must be based on the principles of qualifications, competence and merit without any discrimination or nepotism. Effective and integrity staffing arrangements must be based on the principles of strong qualifications, competence and merit, with no room for discrimination or nepotism that could undermine integrity and professionalism in public administration. Ensuring that the appointment, promotion and termination of employees are based on appropriate qualifications and proven competence will ensure that individuals occupying crucial positions in government have the relevant capabilities to carry out their duties properly. This principle of merit also ensures that the policy on staffing does not only create fair opportunities for all individuals, but also contribute to improving the quality of public services and overall government performance. By ensuring transparency and objectivity in the selection and promotion process, the government can reduce the potential for corruption and ethical violations in personnel management, thereby building public trust in government institutions.

**3. Independence of government apparatus:** Governors need to ensure the independence of government apparatus from political intervention during the election period. Decisions regarding employment must be based on technical and professional considerations. Maintaining the independence of the government apparatus is essential, especially during the gubernatorial election period. The Governor has the responsibility to ensure that the staffing process runs without any political intervention that could undermine the independence and integrity of government institutions. Decisions regarding employee recruitment, placement and promotion must be based on technical and professional considerations, and refer to relevant qualifications and competencies. Therefore,

**4. Application of ethical standards and discipline:** Governors must ensure the application of strict ethical and disciplinary standards in personnel management, to prevent corrupt practices and ethical violations. The application of strict ethical and disciplinary standards is a crucial step that must be taken by the governor in the context of personnel management. The governor has the responsibility to ensure that all actions related to employment follow the high principles of integrity and ethics. By applying strict ethical

standards, the government can prevent corruption, nepotism and abuse of power from occurring which can damage the government's image and undermine public trust. Consistent application of discipline is also necessary to ensure employee compliance with established rules and norms, and provide fair sanctions for those who violate ethical standards and principles of good governance. Thus, the application of ethical and disciplinary standards is an important foundation in creating a staffing environment that is professional, transparent and free from harmful practices.

**5. Independent monitoring and evaluation:** The existence of an independent monitoring and evaluation mechanism for the staffing process can ensure compliance with the principles of good governance. The importance of having an independent monitoring and evaluation mechanism in the staffing arrangement process should not be overlooked. The existence of an independent institution or entity that has the duty to monitor and evaluate the personnel decision-making process will be the main guarantor of compliance with the principles of good governance. This mechanism is able to monitor whether staffing policies are carried out in accordance with the principles of transparency, participation, based on merit criteria, independence of government apparatus, and application of strict ethical standards and discipline. Independent evaluation will identify potential weaknesses, violations, or deviation from those principles and provide the necessary recommendations for improvement. Thus, an independent monitoring and evaluation mechanism will strengthen the personnel management system in achieving the goals of good governance, maintaining government accountability, and ensuring quality services to the community.

### Conclusion

Regulating the authority of the Governor in managing staffing during the gubernatorial election period to realize good governance as legal reform must be carried out because the application of the norms of Article 71 paragraph (2) of the Election Law is not appropriate and relevant to be applied to the Governor as a Personnel Development Officer on the basis of the argumentation as First, by authority based on Article 73 paragraph (2) of Law Number 5 of 2014 concerning ASN explicitly states that the Governor has authority in carrying out "Mutation of Civil Servants in a Central Agency or Regional Agency is carried out by Personnel Development Officials". Second, based on the RDP DPR RI with Bawaslu, Government, KPU and DKPP with the simultaneous post-Election Evaluation agenda on Tuesday, February 3 2016 it is clear that what is at issue is the use of government programs for campaign purposes which are prone to misuse. As for the transfer of civil servants, there are already strict regulations in the ASN Law. Third, the rampant allegations of civil servant involvement in practical politics ahead of the regional elections, it is necessary to carry out continuous staffing development which is the responsibility of the Governor as the Civil Servant Advisory Officer, so that if there are found civil servants who are not neutral during the Pilkada agenda, then the governor as PPK can apply sanctions to ASN as a form of coaching carried out by the governor on ASN. Fourth, with the Merit system, it answers all questions about the transfer and appointment of ASN because it is based on achievement, not the subjectivity of PPK due to planning

problems in procuring ASN employees supervised by the ASN Commission (hereinafter abbreviated as KASN). Fifth, the availability of law enforcement facilities in the field of staffing if there are ASN Employee Disputes which can be resolved through administrative efforts and the State Administrative Court. Administrative measures consist of administrative objections and appeals. Objections are submitted in writing to the superior of the official authorized to punish, stating the reasons for the objection and a copy of which is submitted to the official authorized to punish. An administrative appeal is submitted to the State Civil Apparatus Advisory Board. If administrative efforts have been carried out and there is no settlement, it can be tested at the State Administrative Court. Sixth, the implementation of Article 71 paragraph (2) of the Regional Election Law is not properly implemented in the implementation of PNS Management carried out by the Governor as PPK which in fact is carrying out orders from the ASN Law, so that the authority of the Governor as PPK as stipulated in Article 73 paragraph (2) is an absolute authority that cannot be reduced by other regulations because the transfer of civil servants is part of staff development which is the obligation and authority of the governor as PPK.

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