Position of Authority of Acting Regional Head in the Implementation of Regional Government According to Laws and Regulations

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ABSTRACT

This paper is entitled The Position of Authority of the Acting Regional Head in the Implementation of Regional Government according to the Prevailing Laws. This writing is caused by the absence of the implementation of regional head sorting in 2022 and 2023, causing boredom for the definitive regional head position. To nominate candidates for regional authorities, the President is appointed provincial head officials for governors, and the Ministry of Home Affairs is established for regents and mayors. This article is in question: First, what is the position of the authority of the acting regional head in statutory regulations? Second, what is the power of the interim regional director in drafting and submitting draft regional regulations on APBD, drafting regional rules on changes to APBD, and drafting regional regulations concerning accountability for APBD implementation to DPRD? To discuss this problem, the author uses a normative legal research method or a literature study that examines the norms in the legislation, then proposes theories relevant to the problem being researched. The results obtained from the research and discussion of this research are as follows: First, from the perspective of the legal system, the substance of the circular letter of the Ministry of Home Affairs regarding the granting of authority to regional head officials causes conflicts of legal norms with other laws and regulations, in particular, government regulation number 49 the year 2008 in conjunction with Article 65 of Law Number 23 of 2014 concerning Regional Government. Second, regional head officials do not have the power to decide on changes to the provincial budget perceptual budget plan. And does not have the authority to accountability of the acting regional head to the regional revenue and expenditure budget to the regional people's representative council.

Keywords: Authority, Acting Regional Head, Budgeting

ABSTRAK

Tulisan ini berjudul Kedudukan Kewenangan Penjabat Kepala Daerah Dalam Penyelenggaraan Pemerintahan Daerah Menurut Peraturan Perundang-Undangan. Penulisan ini dilatarbelakangi oleh tidak adanya pelaksanaan pemilahan kepala daerah pada tahun 2022 dan 2023 sehingga menimbulkan kebosanan terhadap jabatan kepala daerah yang definitif. Untuk mengusulkan calon kepala daerah, Presiden mengangkat pejabat kepala provinsi untuk gubernur, dan Kementerian Dalam Negeri dibentuk untuk bupati dan walikota. Pasal ini yang menjadi pertanyaan: Pertama, bagaimana kedudukan kewenangan penjabat kepala daerah dalam peraturan perundang-undangan? Kedua, bagaimana kewenangan direktur daerah sementara dalam menyusun dan menyampaikan rancangan peraturan daerah tentang APBD, menyusun peraturan daerah tentang perubahan APBD, dan menyusun peraturan daerah tentang pertanggungjawaban pelaksanaan APBD kepada DPRD? Untuk membahas masalah tersebut, penulis menggunakan metode penelitian hukum normatif atau studi kepustakaan yang mengkaji norma-norma dalam peraturan perundang-undangan, kemudian mengajukan teori-teori yang relevan dengan masalah yang diteliti. Hasil yang diperoleh dari penelitian dan pembahasan penelitian ini adalah sebagai berikut: Pertama, dilihat dari sistem hukum, substansi surat edaran Kementerian Dalam Negeri tentang pemberian kewenangan kepada pejabat kepala daerah menimbulkan konflik hukum. norma dengan peraturan perundang-undangan lainnya, khususnya Peraturan Pemerintah Nomor 49 Tahun 2008 juncto Pasal 65 Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah. Kedua, pejabat kepala daerah tidak memiliki kewenangan untuk memutuskan perubahan RAPBN perseptual APBD. Dan tidak memiliki kewenangan untuk mempertanggung jawabkan penjabat kepala daerah terhadap anggaran pendapatan dan belanja daerah kepada dewan perwakilan rakyat daerah.

Kata kunci: Kewenangan , Pejabat, Kepala Daerah, Anggaran

A. INTRODUCTION

Indonesia is a unitary state (Unitary State, Eenbeidsstaat). A unitary state is a single-composed state because it only consists of one state, and there is only one Government, namely the central Government, which has the highest power and authority in the field of state administration, establishes government policies, and carries out state government both at the center and in the regions.[1] In a unitary state, state power is divided between the central Government and local governments. Original power is at the main level, while the regions get power from the center by hand over some of the powers that are determined explicitly. In a unitary state, only one power has the authority to make laws that apply to the entire territory of the country.[2] Based on the 1945 Constitution of the Republic of Indonesia, Article 18 paragraph (2) states that provincial, regency and city regional governments regulate and manage their government affairs according to the principles of autonomy and co-administration.[3]

Regional Government is the administration of government affairs by regional governments and regional people's representatives according to the principles of autonomy and co-administration with the principle of broadest autonomy within the system and principles of the Unitary State of the Republic of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia. The above conceptually mentions the word "governance." Governance means broadly, not only the executive organs but also concerning the legislative and judicial organs. Therefore, experts divide the meaning of Government into two: first, Government in a broad sense, which involves legislative, executive, and judicial powers, as the author stated above. Second, Government in a narrow sense, which concerns only the executive, namely the Government. The sense of "government" above clearly refers to Government broadly because it is followed by an explanatory sentence: "organizing government affairs by regional governments and regional people's representative councils." The regional Government is the head of the Region as an

[1] Sohino, 2008, *Ilmu Negara*, Cetakan Kedelapanbelas, Liberty, Yogyakarta, hlm. 224.

[2] Jimly Asshiddiqie, 2007, *Pokok-Pokok Hukum Tata Negara Indonesia Pascareformasi*, PT. Bhuana Ilmu Populer, Jakarta, hlm. 235.

[3] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 18 ayat (2).

element of the regional government administrator who leads the implementation of government affairs which are the authority of the Autonomous Region. The Regional People's Legislative Council is a regional people's representative institution that is domiciled as an element of the regional administration.[4]

The regional government element consists of two components: the Regional Government and the Regional People's Representative Council. This is stated in Article 1 paragraph (2) of Law Number 23 of 2014 concerning Regional Government which states, "Regional Government is the implementation of government affairs by regional governments and regional people's representative councils according to the principle of autonomy and co-administration with the principle of broadest autonomy. in the systems and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia." The existence of these two institutions is an element of regional Government, which means that these two institutions determine policies or development in the area. That is why the success or failure of regional development is generally determined by the ability of these two institutions to coordinate and consolidate regional government programs.[5]

Tjahja Supriatna[6] sorting out the opinions of de Guzman and Tables, explained that the elements of Local Government:

1. Regional Government is a political subsidy from the sovereignty of the nation and state.
2. Local Government is regulated by law.
3. The local Government has a governing body elected by the local population.
4. Regional Government organizes activities based on statutory regulations;
5. Local governments provide services within their jurisdiction.

In general, by referring to statutory provisions, there are two elements of regional Government, namely the regional Government and the regional people's representative council (DPRD). The regional Government is the head of the Region as an element of regional government administration who leads the

[4] Fajlurrahman Jurdi, 2019, *Hukum Tata Negara Indonesia*, Cetakan Ke satu, Prenadamedia Group, Jakarta, hlm. 433.

[5] *Ibid*, hlm. 460.

[6] Nurcholis Hanif, 2007, *Teori dan Praktik Pemerintahan dan Otonomi Daerah*, Gramedia Widiasarana Indonesia, Jakarta.

implementation of government affairs which becomes the authority of the Autonomous Region.[7] The Government referred to here refers to the provincial Government held by the Governor and the district/city government held by the regent/mayor. This means that what is meant by local Government is the executor of executive power in the provinces and districts/cities. Based on principle and system thinking, the principles of regional autonomy concern the following matters. The principle of regional autonomy uses the broadest autonomy in that the regions are given the authority to manage and regulate all government affairs outside the central Government's affairs stipulated in the law. Regions have the authority to make policies to provide services and increase participation, initiatives, and community empowerment aimed at increasing people's welfare.[8]

In line with this principle, moral and responsible autonomy is also implemented. The principle of genuine autonomy is a principle that handles government affairs; it is carried out based on duties, authorities, and obligations that already exist and have the potential to grow, live and develop by the potential and uniqueness of the Region. Thus, each Region's content and type of autonomy are not always the same as for other regions. As for what is meant by responsible autonomy, which in its implementation must be genuinely in line with the aims and intent of granting autonomy, which is basically to empower the Region, including improving people's welfare which is the central part of national goals.

The implementation of regional autonomy must always be oriented towards improving the community's welfare by always paying attention to the interests and aspirations that grow in society. In addition, implementing regional autonomy must ensure harmonious relations between regions and other regions. They can build inter-regional cooperation to improve shared welfare and prevent inter-regional disparities. What is no less important is that regional autonomy must also be able to guarantee harmonious relations between regions and the Government, meaning that it must be able to maintain the territorial integrity of the country and

[7] Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah Pasal 1 ayat (3).

[8] H.M. Aries Djaenuri, 2012, *Hubungan Keuangan Pusat Daerah*, Cetakan Kedua, Ghalia Indonesia, 2014, hlm. 9.

the upholding of the Unitary State of the Republic of Indonesia in the framework of realizing state goals.

For regional autonomy to be implemented in line with the objectives to be achieved, the Government is obliged to guide the form of providing guidelines, such as research, development, planning, and supervision. In addition, standards, directions, guidance, training, supervision, control, coordination, monitoring, and evaluation are also provided. At the same time, the Government is obliged to provide facilities in the form of providing opportunities for convenience, assistance, and encouragement to the regions so that the implementation of autonomy can be carried out efficiently and effectively by statutory regulations.

The contents and spirit contained in Articles 18, 18A, and 18B of the 1945 Constitution of the Republic of Indonesia were changed to become guidelines relating to the following main ideas:

The Indonesian constitutional system is obliged to implement the principle of division of authority based on the principles of deconcentration and decentralization within the framework of the Unitary State of the Republic of Indonesia. Regions formed based on the principles of decentralization, and decentralization is provincial regions, while regions formed based on the principles of decentralization are regency and city regions. Regions formed on the principle of decentralization have the authority to determine and implement policies based on the people's aspirations.

Regional divisions outside the provincial regions are wholly divided into autonomous regions. Thus, administrative and municipal areas within the regency can be made autonomous regions or deleted.[9]

In the context of the Unitary State of the Republic of Indonesia, if the state's territory is divided into a territorial division of power format, it will manifest itself in the form of a government unit called the central Government and regional governments. What is meant by the central Government is the apparatus of the Unitary State of the Republic of Indonesia which exercises executive power, namely consisting of the President and the Ministers in the cabinet.

[9] *Ibid*, hlm. 10.

The definition of "regional government" is the implementation of government affairs by the regional Government and DPRD according to the principle of autonomy and co-administration with the principle of broadest autonomy within the system and principles of the Unitary State of the Republic of Indonesia as[10] referred to in the 1945 Constitution of the Republic of Indonesia. While the definition of "local government" is Governors, Regents, or Mayors and regional apparatus as elements of regional government administration. The definition of regional Government and regional Government as formulated in Law Number 32 of 2004 means that regional Government refers to the functions or fields of work carried out by regional governments, namely the implementation of decentralization and regional autonomy. Meanwhile, regional Government refers to bodies, organs, or equipment that carry out the functions or areas of work of regional Government, including decentralization and regional autonomy.[11]

A regional government leads each Region and is called the regional head. The head of the provincial area is called the Governor, the head of the district area is called the Regent, and the head of the city area is called the Mayor. A deputy regional head assists each regional head. For the province, it is called the Deputy Governor; for the regency, it is called the Deputy Regent; and for the city, it is called the Deputy Mayor. Regional heads are related to the principle of decentralization adopted by a unitary state because decentralization will give birth to autonomous regions where autonomous regional heads lead these autonomous regions. Thus the position of the regional head can be understood as the head of the local Government contained in a unitary state, which is obtained as a consequence of the implementation of the principle of decentralization.[12]

Regional head positions are filled democratically through pair elections, meaning direct election of the Regional Head and their partner Deputy Regional Head. There is a discrepancy between the 1945 Constitution and the provisions of Law Number 32 of 2004. The 1945 Constitution, after the amendment, stipulates that Governors, Regents, and Mayors, respectively, as heads of provincial, district,

[10] Azmi Fendri, 2016, *Pengaturan Kewenangan Pemerintah dan Pemerintah Daerah*, Cetakan Kesatu, PT. RajaGrafindo Persada, Jakarta, hlm. 26.

[11] *Ibid*, 27.

[12] Dian Bakti Setiawan, 2011, *Pemberhentian Kepala Daerah: Mekanisme Pemberhentiannya Menurut Sistem Pemerintahan Indonesia*, Rajawali Press, Jakarta, hlm. 80.

and city governments, are democratically elected. The strategic position of regional heads resulted in many being involved in legal problems, which forced them to be dismissed from their term of office. An ideal replacement for the regional head is appointed to avoid a vacancy.

There are three types of substitution for regional heads known in the Indonesian Constitution, namely daily executors (Plush), Task Executors (Plt), and Acting (Pj). Daily executors are mandated, where accountability is still attached to regional heads, while acting (Pj) are specific and can only be used for regional head replacement officials if there is a vacancy in the regional head and deputy regional head positions at the same time. The term executor of duties (Plt) is general and not limited to substitute regional head officials. Although Acting and Executing Tasks can replace regional heads, there are different conditions for using the terms. The term acting regional head is attached to the deputy regional head due to the dismissal of the regional head (the vacancy is only for the position of regional head). In this case, the Acting Regional Head is determined by the Minister of Home Affairs on the proposal of the Governor for the Acting Regent/Mayor. At the same time, the President appoints the Acting Governor on the Minister of Home Affairs proposal.[13]

Based on the Governor's supervisory function over the Regency/City,[14] the recommendation of the Acting Regent/Mayor to the Minister of Home Affairs is the prerogative of the Governor. To be appointed as Acting Regional Head, one must meet the requirements and criteria as stipulated in Government Regulation Number 6 of 2005 Article 132 paragraph (1) "Acting Regional Head as referred to in Article 130 paragraph (3) and Article 131 paragraph (4), Appointed from civil servants who meet the requirements and criteria:

a. Have experience in the field of Government, as evidenced by a history of the office.
b. Holds an echelon I structural position with a class rank of at least IV/c for Acting Governor and an echelon II structural position with a rank of at least IV/b for Acting Regent/Mayor.

[13] Pasal 130 ayat (3) Peraturan Pemerintah Nomor 6 Tahun 2005 tentang Pemilihan, Pengesahan, Pengangkatan dan Pemberhentian Kepala Daerah dan Wakil Kepala Daerah.

[14] Dian Bakti Setiawan, op.cit., hal. 171.

c. List of Assessment of Work Implementation for the last 3 (three) years at least has a good score.

Although temporary, the acting regional head is a substitute for the regional head, giving him the same authority as the authority attached to the definitive regional head. This is evident that no regulations were limiting the authority of the acting regional head until the issuance of Government Regulation 49 of 2008. Based on Article 132A paragraph (1), there are restrictions on the authority of the acting regional head as follows: "Acting regional head or acting regional head as referred to in Article 130 paragraph (1) and paragraph (3), as well as Article 131 paragraph (4), or who are appointed to fill the vacant position of regional head due to resigning to nominate/nominated as a candidate for regional head/deputy regional head, as well as regional heads who appointed from the deputy regional head who replaces the regional head who resigned to nominate/nominate as a candidate for regional head/deputy regional head is prohibited:

1) Perform employee mutations.

Regional staffing is a system and procedures regulated by legislation. In the national staffing system, civil servants (PNS) have an important position in the administration of Government and function as a unifying tool for the nation. In line with the decentralization policy, some of the authority in the field of staffing has been handed over to the regions to be managed in the regional staffing system. As a consequence of the decentralization of the personnel management system, it uses a combination of the unified system and the separated system, meaning that there are parts of authority that remain the authority of the center and parts of authority that are handed over to the regions to be carried out by regional staffing supervisors.[15]

2) Canceling permits issued by previous officials and issuing licenses contrary to those issued by previous officials.

According to Sjachran Basah, permits are legal acts of one-sided state administration that apply regulations in concrete terms based on requirements and procedures stipulated by laws and regulations. Meanwhile, according to Ateng Syafrudin, permits aim to remove obstacles so that something prohibited becomes

[15] Max Boli Sabon, 2011, *Hukum Otonomi Daerah*, Universitas Atma Jaya, Jakarta, hlm. 213.

permissible. In issuing permits, five elements must be met: juridical instruments, statutory regulations, government organs, concrete events and procedures, and requirements.[16]

Acting regional heads with a short term of office of only a maximum of one year are one reason why the Acting regional head is prohibited from issuing permits because the issuance of a permit is always accompanied by a deadline for the permit. What happens if the permit is still valid while the regional head official who issued the permit has expired and is replaced by a new regional head official, and the new regional head official disagrees with the previous official regarding the permit? The party indeed granted the permit feels disadvantaged, which in the end creates a series of problems.

3) Make a policy regarding the expansion of regions that are contrary to the policies of previous officials. Regional expansion is one type of regional formation. Philosophically, the purpose of regional expansion has two interests: the public service approach to the community and improving the welfare of the local community.[17]

Law Number 32 of 2004, regarding regional expansion, is regulated in Article 4, paragraphs (3), (4), and Article 5, paragraph (1) as follows: from one area to two or more areas. In paragraph (4), it is stated that the division of one Region into two or more regions, as referred to in paragraph (3), can be carried out after reaching the maximum age limit for governance. Meanwhile, Article 5 paragraph (1) states: "The establishment of a region as referred to in Article 4 must fulfill regional administrative, technical and physical requirements".

4) Make policies contrary to previous government administration policies and official development programs.

According to Werf, policy means achieving specific goals with certain targets and in a particular order. While government policy has a common understanding, namely a decision made systematically by the Government with specific aims and objectives that concern the public interest. Central government

[16] Ridwan HR, 2006, *Hukum Administrasi Negara*, PT. Raja Grafindo Persada, Jakarta, hlm. 201.

[17] Siswanto Sunarno, 2008, *Hukum Pemerintahan Daerah Di Indonesia*, Sinar Grafika, Jakarta, hlm. 15.

policies can be Government Regulations (P.P.), Ministerial Decrees (Kempen), and others; meanwhile, if the local government policy will give birth to Decree (S.K.), Regional Regulations (Perda), and so on.

Every policy must be accounted for; the accountability of the definitive regional head and the acting regional head have differences; the definitive regional head must provide a responsible report to three parties (Government, DPRD, and the community), while the acting regional head must only submit one accountability report to the President through the minister in for the acting Governor, and to the Minister of Home Affairs for the Acting Regent/Mayor. This is due to how an official's authority is obtained being different from that of a definitive official. Definitive Regional Heads obtain direct authority from the people, known as the community agreement initiated by J.J. Rosseau, which later became known as elections in Indonesia for the election of the President and local elections for the election of Regional Heads. Meanwhile, the Acting Regional Head has a political element in which the Minister of Home Affairs determines the Acting Regent or Mayor based on the Governor's proposal and the appointment of the Acting governor by the President on the proposal of the Minister of Home Affairs so that the authorities and responsibilities are different.[18]

In Law number 23 of 2014 concerning Regional Government, Article 65 states:

(1) The regional head has the following tasks:
   a. lead the implementation of Government Affairs, which are the authority of the Region based on statutory provisions and policies stipulated together with the DPRD;
   b. maintaining peace and public order;
   c. drafting and submitting a draft regional regulation on the RPJPD and a draft regional regulation on the RPJMD to the DPRD for discussion with the DPRD, as well as formulating and stipulating the RKPD;

[18] Hayati, M. Tinjauan Yuridis Kewenangan Penjabat Kepala Daerah dalam Menyelenggarakan Pemerintahan Daerah.

d. drafting and submitting a draft regional regulation on APBD, a draft regional regulation on changes to the APBD, and a draft regional regulation on accountability for the implementation of the APBD to the DPRD for joint discussion;
e. represent the Region inside and outside the Court, and can appoint a legal representative to represent it by the provisions of laws and regulations;
f. propose the appointment of deputy regional heads; and
g. carry out other tasks by the provisions of the legislation.

(2) In carrying out the tasks referred to in paragraph (1), the regional head has the authority to:

a. submit a draft regional regulation;
b. stipulate regional regulations that have received joint approval from DPRD;
c. stipulate local regulations and regional head decisions;
d. take specific actions in urgent situations that the Region and the community urgently need;
e. carry out other authorities by the provisions of the legislation.

The regional Government, as the executive field's executing element, is equipped with apparatus and departments. At the provincial level, the regional Government is led by the Governor, while at the district/city level, the regional Government is led by the regent/mayor. As one of the elements of regional Government, the existence of regional governments, namely governors, regents, and mayors, obtaining their positions is carried out through direct regional head elections, as stipulated in Law Number 1 of 2015, as last amended by Law Number 10 of 2015. 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Laws.

One of the constitutional bases for holding regional head elections in Article 18 of the 1945 Constitution of the Republic of Indonesia. Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia stipulates that Governors, Regents,

and Mayors are, respectively, the heads of regional governments, which are elected through the general election of heads regional elections or Pilkada, which are held democratically and based on people's sovereignty.

Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Laws is the result of several amendments to Peru Number 1 of 2014. In the proclamation considering Government Regulation instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors, it is emphasized that to guarantee the "elections" of governors, regents and mayors are carried out democratically as mandated in Article 18 paragraph (4)) The 1945 Constitution of the Republic of Indonesia, the sovereignty of the people and democracy of the people, by the people, and for the people must be respected as the main conditions for the implementation of "elections" for governors, regents, and mayors. Therefore, people's sovereignty and democracy need to be emphasized by implementing "direct election of governors, regents, and mayors by the people" while still making some fundamental improvements to the various problems of direct elections that have been implemented so far.

In this study, there were 101 regional heads consisting of governors and deputy governors, regents and deputy regents, and mayors and deputy mayors whose term of office ends in 2022 and 2023 will be replaced by acting regional heads to fill the vacant regional head positions. 26 (twenty) months are starting on October 17 until the election of the Governor and Deputy Governor, Regent and Deputy Regent, Mayor and Deputy Mayor in the simultaneous regional head election held implementation according to the agreement between the House of Representatives (DPR), the General Election Commission (KPU), the Election Supervisory Body (Bawaslu) on November 27, 2024, the position of regional head will be replaced by the acting regional head.

In Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations instead

of Law Number 1 of 2014 U concerning the Election of Governors, Regents, and Mayors to become Law states in Article 201 paragraph (9) To fill the vacancies in the positions of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor whose term of office ends in 2022 as referred to in paragraph (3) and whose term of office ends in 2023 as referred to in paragraph (5), appointed acting Governor, acting Regent, and acting Mayor until the election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor through simultaneous national elections in 2024.

While in the Regulation of the Minister of Home Affairs Number 35 of 2013 concerning Procedures for Inaugurating Regional Heads and Deputy Regional Heads states in Article 1 paragraph (5) Acting Regional Heads are Officials appointed by the President for Governors and Officials appointed by the Minister of Home Affairs for Regents and Mayors to carry out the duties, powers and obligations of regional heads within a certain period.

Of course, it is interesting to examine the authority of the acting regional head in the Circular Letter of the Minister of Home Affairs Number 821/5492/S.J./2022. The circular letter authorizes the Acting Regional Head to:

Dismissal, suspension, imposition of sanctions, and other legal actions against officials/state civil servants within the provincial/regency/city regional government who commit disciplinary violations and follow-up legal proceedings by statutory regulations.

Transfer transfers between regions and government agencies are approved per the terms and conditions stipulated in laws and regulations.

In addition, regional head and deputy regional head elections, especially DKI Jakarta, allow for a two-round scheme if the candidate does not reach the one-round vote result requirement in the first round of elections. The process of adding time can also occur if there is a dispute over the voting results at the Constitutional Court, which can take up to 4 (four) months. According to the Pilkada Law, the term of office of Governors/Regents/Mayors whose term of office expires in 2022 will be replaced by Acting (P.J.) Governors/Regents/Mayors, which lasts for 1 (one) year and can be extended 1 ()

time so that the full term Acting position for 2 (two) years. The appointment of Acting Regional Heads by the Central Government violates the principle of regional autonomy in which the Regional Authority makes decisions is taken by Acting Regional Heads appointed by the Central Government.

After paying attention to the legal norms in these laws and regulations, it is interesting to examine the conflict of norms between the Circular Letter of the Ministry of Home Affairs and the norms in Government Regulation Number 49 of 2008. the term of office of the acting regional head of up to twenty-six months certainly raises legal issues. Especially regarding the legal basis for the appointment of Acting Regional Heads as stated in Law Number 10 of 2016 concerning Regional Head Elections, Article 201 of the law states:

(9) To fill the vacancy in the positions of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor whose term of office ends in 2022, as referred to in paragraph (3) and whose term of office ends in 2023 as referred to in paragraph (5), appointed acting Governor, acting Regent, and acting Mayor until the election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor through simultaneous national elections in 2024.

(10) To fill the vacancy in the position of Governor, an acting Governor is appointed from a mid-high leadership position up to the Governor's inauguration by the provisions of laws and regulations.

(11) To fill the vacancy in the position of Regent/Mayor, acting Regents/Mayors are appointed from high leadership positions up to the inauguration of Regents and Mayors by the provisions of laws and regulations.

Then the authority of the acting regional head was born based on the Circular Letter of the Ministry of Home Affairs Number 821/5492/S.J./2022, juncto Government Regulation Number 49 of 2008 concerning the Third Amendment to Government Regulation Number 6 of 2005 concerning Election, Ratification of Appointment and Dismissal of Regional Heads and Deputy Regional Heads junto Article 65 Law Number 23 of 2014 concerning Regional

Government.

So researchers are interested in knowing the norms regarding the regulation of the position of authority of regional heads in statutory regulations. In the opinion of the researcher, the norms for regulating the authority of acting regional heads in the Minister of Home Affairs Circular Letter Number 821/5492/S.J./2022 and the legal norms in Article 132A paragraph (1) Government Regulation Number 49 of 2008 concerning Elections, Ratification of Appointments and Dismissals of Regional Heads and Deputy Heads Regional junto Article 65 Law Number 23 of 2014 concerning Regional Government in a state of conflict or "conflicten van normen."

The author will use a study based on the Legal System theory approach initiated by Lawrence Meyer Friedman to facilitate the flow of analysis in answering problems to produce representative scientific thoughts. Even though this problem is studied based on this theory, the author will use a legal substance approach to facilitate explanations of thoughts compiled to answer these problems. The familiar thesis of Lawrence M. Friedman regarding the theory that theory in every legal system always contains three components: legal structure, legal substance, and legal culture.

Friedman explained the understanding of legal structure as follows: First, many Features of a working legal system can be called Structural. The moving parts, to speak of the machine courts, are a simple and obvious example; their structures can be described as a panel of such and such a size, sitting at such and such a time, which this or that limitation on jurisdiction. The shape, size, and legislative powers are other structure element. A written constitution is still another important feature in the structural landscape of law. It is or attempts to be the expression or blueprint of basic—features of the country's legal processes, the organization, and the framework of Government.

Friedman then identified the elements of a legal system, namely as follows, first of all, the system must have a structure. This legal system structure is the framework, the longest-lasting part that gives the particular shape and boundaries of the entirely legal system. The legal system structure consists of similar

elements; for example, the Court, as an institution authorized to apply the law, structurally concerns the number and size of assembly members, the scope of their powers, or limits of authority. In short, this understanding relates to the structure of the legislature, from the institutions that are empowered to apply the law and enforce the law.

According to Friedman, the second element of the legal system is the substance: "The second type of component can be called "Substantive." There is the actual product of the legal system, what the Judges, for example, actually say and do. Substance includes, naturally e- enough, those propositions referred to as legal rules. Realistically it also includes rules which are not written down, i.e., those regulations of behavior that could be reduced to general statements. Every decision too is a substantive product of the legal system as is every doctrine announced in Court or enacted by the legislature or adopted by the agency of Government."

The substance component includes everything that results from structure, including legal norms, laws and regulations, decisions, and doctrines. Put forward Friedman in What is a legal system? that the law is not only in written form (laws or statutory regulations) as an official product of orders but also in the form of rules or laws originating outside the law. Therefore, Friedman continued, there are two ways to view law: official law originating from the Government, and the other must be viewed more broadly.

Friedman said that elements of the legal system do not only consist of structure and substance. But there are still others that constitute the third element, namely legal culture. According to Friedman, "Legal Culture can be defined as those attitudes and values affecting behavior related to law and its institutions either positively or negatively. Love of litigation or hatred of it is part of the Legal Culture, as would be attitudes toward child-rearing, as these attitudes affect behavior that is at least nominally governed by law. The legal culture, then, is a general expression of how the legal system fits into the culture of the general society.

Legal culture includes people's attitudes or the values they hold that

determine the activities or activities of the legal system concerned. These attitudes and values will positively and negatively influence behavior related to the law so that legal culture is an embodiment of people's thinking and social forces that determine how the law is used, avoided, or abused.[19]

Furthermore, Freidman (1975: 14) gives the following definition of substance: The substance is composed of substantive "rules and rules about how institutions should behave." that are created by substantive legal regulations) applies/acts. The substance is a natural result published by the legal system. This tangible result can be in the form of concrete law or individual legal rules, as well as in abstract law or general law rules.[20]

In this research, the author takes an approach from the legal system's perspective in terms of legal substance; if a norm in a statutory regulation conflicts with a norm in another statutory regulation, what is examined is the legal substance. In this case, the legal substance is the norm in Article 132A paragraph (1) Government Regulation Number 49 of 2008 with the Ministry of Home Affairs circular letter number 821//5492/S.J./2022, juncto Article 65 of Law Number 23 of 2014 concerning Regional Government.

B. PROBLEM FORMULATION

The formulation of the problem is a benchmark for thinking in legal research. The benchmark for thinking can be taken from identifying problems in each study. Thus, identifying a research problem is a sufficient reason to determine an appropriate problem formulation in solving or finding solutions in the form of assumptions from a study. Therefore, the formulation of the problem in this research is as follows:

1. What is the position of authority of the acting regional head in statutory regulations?

[19] Santiago, Faisal. "*Strategi pemberantasan kejahatan korupsi: kajian legal sosiologis*." *LEX PUBLICA: Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia* 1.1 (2014).

[20] M. Bakri, 2013, *Pengantar Hukum Indonesia Sistem Hukum Indonesia pada Era Reformasi*, Cetakan ke dua, Universitas Brawijaya, Malang, hlm. 21.

2. What are the authority of the acting regional head in drafting and submitting the draft regional regulation on APBD, the draft regional regulation on changes to the APBD, and the draft regional regulation on accountability for the implementation of the APBD to the DPRD?

C. RESEARCH METHODOLOGY

There is research that requires one general goal and research that has several objectives according to the sub-problems. A research objective must be stated clearly and concisely because this will give direction to the research. Based on the background mentioned above, the objectives of this research are:

a. To find out or analyze legal issues related to the appointment of acting regional heads in the transition period until the election of regional heads in the simultaneous local elections in 2024.
b. To find out or analyze the position of authority of the acting regional head in statutory regulations.
c. To find out and analyze the authority of the acting regional head in preparing and submitting a draft regional regulation on APBD, a draft regional regulation on changes to the APBD, and a draft regional regulation on accountability for the implementation of the APBD to the DPRD.

Based on the research objectives referred to above, it is hoped that this research will provide benefits or contributions as follows:

a. Practical Benefits

This research can help reform efforts in law, precisely Law Number 10 of 2024 concerning Regional Head Elections, and other benefits such as harmonization in the field of laws and regulations so that it can be a solution to legal problems related to the position of acting regional heads in filling the vacant positions of Governor, Regent, and Mayor.

b. Theoretical Benefits

Through this research, the elements of similarities and differences in the objects being compared can be revealed, providing a deeper understanding of the objects being compared and knowing the background of the similarities and

differences.

The term "legal research" consists of two words, namely: "research" and "law." The origin of the word "research" is "conscientious," which means an action full of care and accuracy. At the same time, "law" is interpreted very diverse according to the point of view of each school of legal philosophy. Furthermore, the word research which in scientific literature is known as the word "research," consists of two root words, namely "re" and "search" "re" means to go back, and "search" means to find something carefully "examine, look carefully at, through, or into... to find something". Thus, legal research or legal research is a thorough and thorough retrieval of legal materials or data to solve legal problems. Why is it said penman Back? Because before writing proposals, theses, theses, dissertations, and others, legal materials or legal data already existed in various places in the library and the field.[21]

1. Type of Research

If the object is purely normative law, then this research is referred to as normative legal research and does not use social research methods in general because the target research material is secondary data, especially primary legal material (laws that have binding force), secondary legal materials (complementary materials), and tertiary legal materials (in the form of legal information materials) which are then analyzed qualitatively in the sense of formulation of justification through the quality of the legal norms themselves, expert opinions/doctrines and supporters of legal information.[22]

This research is a qualitative type through literature study. The stages of the research were carried out by collecting library sources, both primary and secondary. This study classifies data based on research formulas. In the advanced stages, data processing and citation of references are carried out to be displayed as research findings, abstracted to obtain complete information, and interpreted to produce knowledge for concluding. As for the interpretation stage, an analysis or

[21] I Made Pasek Diantha, 2016, *Metodologi Hukum Normatif dalam Justifikasi Teori Hukum*, Prenada Media Group, Jakarta, hlm. 1.

[22] Mezak, Meray Hendrik. "*Jenis, Metode dan Pendekatan Dalam Penelitian Hukum*." (2006), hlm. 87.

approach is used, for example, philosophical, theological, Sufistic, interpretation, Sarah, and others.[23]

2. Research Approach

a. Legislative approach

One of the normative conditions that raise normative legal problems is the occurrence of vertical conflicts, namely conflicts between the norms of lower laws and regulations against the norms of higher laws and regulations. Norm conflicts can also be horizontal if one norm conflicts with other norms in one law or regulation or internal horizontal conflict. Meanwhile, external horizontal conflicts can occur between one norm and another from different laws. Internal horizontal conflicts are resolved by synchronizing norms based on systematic or teleological interpretations.

Meanwhile, the resolution of external horizontal conflicts can use the adage "lex specialis derogat legi general," which means specific laws and regulations set aside general laws and regulations, or by using the maxim "lex posterior derogat legi preori," namely laws and regulations the new law overrides the old laws and regulations in the same substance. On the one hand, vertical conflict resolution is resolved by using the adage or maxim "lex superior derogat legi inferior"; higher laws and regulations overrule lower laws and regulations. To ascertain which is higher and which is lower, usually, in every country's legal system, there is a law that regulates it. For example, the Indonesian legal system regulates this in Law Number 12 of 2011 concerning the Formation of Legislation.

Article 7 of the law regulates the levels (hierarchy) of laws and regulations, which read as follows:

(1) Types and hierarchy of laws and regulations consist of:

a. The 1945 Constitution of the Republic of Indonesia.
b. Decree of the People's Consultative Assembly.
c. Laws/Government Regulations instead of Laws.
d. Government regulations.
e. Presidential decree.

[23] Darmalaksana, Wahyudin. *"Metode penelitian kualitatif studi pustaka dan studi lapangan."* *Pre-Print Digital Library UIN Sunan Gunung Djati Bandung* (2020), hlm. 5.

f. Provincial Regulations.

g. District/City Regional Regulations.

The legal force of laws and regulations is by the hierarchy referred to in paragraph (1). The question arises, what are the hierarchy and legal force of other laws and regulations other than those mentioned in Article 7 paragraph (1)? Article 8 paragraph (2) states that laws and regulations other than those mentioned in Article 7 paragraph (1) are recognized and have binding legal force to the extent ordered by higher laws and regulations or formed based on authority. The phrase "as long as higher laws and regulations order it" has a legal meaning that the hierarchy is lower than the laws and regulations that order it.

How is the existence of a hierarchy of laws and regulations that are made based on authority but without orders from higher laws and regulations? In this case, the hierarchy must be considered the same as the hierarchy of higher laws and regulations because in the formulation of Article 8 paragraph (2), the word "or" is used in combining the phrases "as long as ordered by higher laws and regulations" with the phrase "formed based on authority."

In total, it reads as follows:

Legislation, as referred to in paragraph (1), is recognized and has binding legal force as long as higher statutory regulation orders it "or" is formed based on authority. The word "or" in this formulation signifies the degree of equality between the two types of laws and regulations. Thus, it means that both laws and regulations made on the basis of orders from higher laws and regulations and on the basis of their own authority have a hierarchy that can be considered the same or equal.

From this description, it can be understood, for example, that a Minister of Home Affairs Regulation (Permendagri) relating to the implementation of regional autonomy does not have a higher hierarchy than a regional regulation (Perda). Even more so if the establishment of the Region was based on a direct order from a far higher level of legislation, in this case, a law. If viewed theoretically from the order of delegation, for example, in the case of Permendagri, it appears that the Permendagri gets a delegation from a Presidential

Regulation, a Presidential Regulation gets a delegation from a Government Regulation, a Government Regulation gets a delegation from a Law, so the Permendagri means it gets three times the range of delegations. As for regional regulations, they only get a one-time span of delegation, namely only from laws. In this case, the Permendagri cannot overrule regional regulations because, for example, the hierarchy of the Permendagri is higher. After all, the central Government's organs form them.[24]

1. Research Data

Suppose legal research is focused on examining the quality of normative legal material. In that case, the target data/material is secondary data, namely data already available and not limited by place and time. The data in question is primary or positive legal material, which means a legal norm with binding power. Then secondary legal materials, namely legal materials, complement primary legal materials such as draft laws and academic texts. Meanwhile, tertiary legal materials are legal information materials that are either documented or presented through the media. Suppose legal research is focused on testing public compliance with a legal norm to measure the effectiveness of an applicable legal regulation/material. In that case, the object or target data is primary data. Primary data is obtained directly by researchers in the field through respondents through observation, interviews, and questionnaires. In this type of research, the determination of the place or area and research object (population and sample) must be detailed.[25]

D. FINDING & DISCUSSION

About the hierarchy of legal norms, Hans Kelsen put forward a theory regarding the levels of legal norms (Stufentheorie). Hans Kelsen argues that legal norms are tiered and layered in a hierarchy (organization) in the sense that a lower norm applies, originates from, and is based on a higher norm; a higher norm

[24] I Made Pasek Diantha, *Metodologi Penelitian Hukum.....*, *Op. Cit,* hlm. 156-157-158-159.

[25] Mezak, Meray Hendrik,*Op. Cit*, Metode dan Pendekatan.... hlm. 93-94.

applies, originates from, and is based on even higher norms, and so on up to a norm that cannot be traced further and is hypothetical and fictitious, namely Basic Norms (Grundnorm).[26]

The basic norm is the highest in a system of norms that are no longer formed by a higher norm. Still, the basic norm is determined in advance by society as a fundamental norm which is a dependency on the norms below it, so a basic norm is said to be pre-supposed. The theory of levels of legal norms from Hans Kelsen was inspired by a student named Adolf Merkl, who argued that a legal norm always has two faces (das Doppelte Rechtsantlitz). According to Adolf Merkl, a legal norm is upwardly sourced and based on the norm above it. Still, downwards it also becomes the source and the basis for the legal norms below it, so a legal norm has a validity period because the validity period of a legal norm depends on the legal norms above it. If the legal norms above it are repealed or abolished, basically the legal norms under it will also be revoked or abolished.

Based on Adolf Merkl's theory, Hans Kelsen, in his theory of normative levels, also argues that a legal norm always originates and is based on the norm above it. Still, downwards the legal norm also becomes the source and basis for norms lower than it. Regarding the structure/hierarchy of the norm system, the highest norm (Basic Norm) is the place for the norms below it to depend, so if the Basic Norm changes, it will damage the norm system below it.

Hans Nawiasky, one of Hans Kelsen's students, developed a theory about these norms about the existence of a state. Hans Nawiasky, in his book Allgemeine Rechtslehre, argues that according to Hans Kelsen's theory, the legal norm of any country is always layered and tiered. The norms below apply, originate, and are based on higher norms; higher norms apply, originate, and are based on even higher norms, up to the highest norm called the Basic Norm.

Hans Nawiasky also argues that apart from the multi-layered and tiered norms, the legal norms of a country are also grouped groups, and the grouping of legal norms within a country itself into four major groups, namely:

Group I: Staatsfundamentalnorm (State Fundamental Norms),

[26] Hans Kelsen, 1945, *General Theory of Law and State, Russell & Russell, New York*, hlm. 113.

Group II: Staatsgrundgesetz (Basic State Rules/Basic State Rules),

Group III : Formell Gesetz ("formal" law),

Group IV : Verornung & Autonome Satzung (Implementing Rules & Autonomous Rules).[27]

In discussing the issue of the structure of norms and institutional structures, there is a theory put forward by Benyamin Akzin in his book entitled Law, State, and International Legal Order. Benyamin Akzin argues that the formation of public law norms differs from private law norms. If we look at the Norm Structure, public law is above private law, whereas if we look at the Institutional Structure, state institutions (Public Authorities) are above society (Population).

In terms of its formation, the public legal norms are formed by state institutions (state authorities, people's representatives) or also called the superstructure, so in this case, it is clear that the legal norms created by these state institutions have that position higher than the legal norms formed by the community or also called infrastructure.[28]

The highest legal norm and the first group in the hierarchy of state legal norms are "Staatsfundamentalnorm." Notonagoro translated the term Staatsfundamentalnorm in his speech at the first Anniversary of Airlangga University (November 10, 1955) with the Principles of Fundamental Principles of the State[29] then Joeniarto, in his book entitled History of the Constitutional Republic of Indonesia, called it the First Norm. Meanwhile, A. Hamid S. Attamimi mentions "Staatsfundamentalnorm" with the State Fundamental Norms. The elucidation of the 1945 Constitution states the Constitution creates the main ideas contained in the preamble to its articles (which are none other than the Staatsfundamentalnorm).

The fundamental norms of the state, which are the highest in a country, are not formed by a higher norm but are "pre-supposed" or determined in advance by the people in a country and the norm on which these norms depend—Law under

[27] Hans Nawiasky, 1948, *Allgemeine Rechtslehre als System der rechtlichen Grundbegriffe*, Cetakan ke-2, Einsiedeln/Zurich/Koln, Benziger, hlm. 31 dst.

[28] Benyamin Akzin, 1964, *Law, State and International Legal Order Essays in Honor of Kelsen*, Knoxville, The University of Tennesee Press, hlm. 3-5.

[29] Notonagoro, 1988, *Pancasila dasar Falsafah Negara (kumpulan tiga uraian pokok-pokok persoalan tentang Pancasila*, cet. Ke-7, Bina Aksara, Jakarta, hlm. 27.

it. A higher norm does not form this highest norm because if it is the highest norm formed by even higher norms, the highest norms are formed by even higher norms, so it is not a high norm.[30]

Hans Kelsen's theory of the hierarchy of legal norms is just one part of Hans Kelsen's theory of law, primarily what is known as the "Pure Theory of Law" (Rheine Rechtslehre). However, the theory of the hierarchy of legal norms is a subject that is considered very important in Hans Kelsen's system of legal philosophy. This theory is also referred to as the "Theory of the hierarchical structure of the legal order" or the theory of the hierarchical structure of the legal order as an essential part of a pure theory of law. His theory started sticking out for the first time since it was introduced by Adolf Julius Merkl (1890-1970) in 1918 when he conducted a study on "The hierarchy of the sources of law."[31]

The issue of authority is a matter that has been widely discussed and has even become the object of a dispute submitted to the Constitutional Court. One institution that has submitted disputes to the Constitutional Court is the Government. The Government filed a lawsuit with the Constitutional Court because the DPR prevented it from purchasing the shares divested by P.T. Newmont Nusa Tenggara. This dispute emerged because each state institution considers itself to have the authority granted by law. At the same time, other institutions also assume that some want to give in to one another. The theory that examines this is the theory of authority.[32]

The term authority theory comes from an English translation, namely authority of theory, the term used in Dutch is theorie van het gezag. At the same time, in German, it is theorie der autorotate. Authority theory comes from two syllables, namely theory and authority. Before explaining the meaning of the theory of authority, the following is a theoretical concept of authority. As quoted by Ridwan H.B., H.D. Stoud presents the notion of authority. Authority is "all the rules

[30] Maria Farida Indrati S, 2020, *Ilmu Perundang-undangan Jenis, Fungsi, dan Materi Muatan*, cet. ke-1, PT. Kanisius, Sleman, hlm. 48.

[31] D.A. Jeremy Telman, 2008, *The Reception of Hans Kelsen's Legal Theory in the United States: A Sociological Model*, Faculty of Law Publication, Valparasio University.

[32] H. Salim HS, 2022, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, cet-6, PT. RajaGrafindo Persada, Depok, hlm. 183.

relating to the acquisition and use of government authority by public law subjects in public relations.[33]

There are two elements contained in the understanding of the concept of authority presented by H.D. Stoud, namely:

1. The existence of legal regulations; and
2. The nature of the legal relationship.

Before this authority is delegated to the institution that implements it, it must first be determined in statutory regulations, whether in the form of laws, government regulations, or regulations at a lower level. The nature of a legal relationship is a nature that is related and has something to do with ties or affinity or is related to law. There are legal relations that are public and private.

Ateng Syafruddin presents the notion of authority. He argued that "there is a difference between the meaning of authority and authority. We must distinguish between authority (authority, gezag) and authority (competence, bevoegheid). Authority is formal power, which comes from power granted by law, while authority only concerns a certain "onderdeel" (part) of authority. Within authority, there are powers (rechtsbe voegdheden). Authority is the scope of public legal action; the scope of governmental authority does not only include the authority to make government decisions (bestuur) but includes authority in the context of carrying out tasks and granting authority. The main distribution of authority is stipulated in statutory regulations.[34]

Ateng Syafrudin presents both the concept of authority and the concept of authority. The elements listed in authority include:

a. The existence of formal power; and
b. Power is given by law.

The elements of authority, namely only regarding a certain "onderdeel" (part) of authority, is "an ability granted by the applicable laws and regulations to cause legal consequences.[35] Meanwhile, the notion of authority is found in Black's Law Dictionary. Authority or authority is: the "Right to exercise powers; to implement

[33] Ridwan HR, 2008, *Hukum Administrasi Negara*, RajaGrafindo Persada, Jakarta, hlm. 110.

[34] Ateng Syafruddin, 2000, Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung jawab, Jurnal Pro Justitia Edisi IV, Universitas Parahyangan, Bandung, hlm. 22.

[35] H. Salim HS, *Penerapan Teori Hukum*, *Op. Cit*, hlm. 185.

and enforce laws; to exact obedience; to command; to judge. control over; jurisdiction. Often synonymous with power".[36]

The elements listed in the theory of authority include:

1. The existence of power;
2. The existence of government organs; and
3. The nature of the legal relationship.

Of the three elements, what is explained is only the definition of government organs and the nature of legal relations. Government organs are government tools that have the task of running the wheels of Government. A legal relationship is a relationship that gives rise to legal consequences. Legal consequences are the emergence of rights and obligations.[37]

In the concept of constitutional law and administrative law, the existence of government authority has a critical position. So important is the position of governmental authority[38] such that F.A.M. Stronik and J.G. Steenbeek calls it a core concept in constitutional law and administrative law (het begrip bevoegdheid is and also een kernbegrip in het staats en administratief recht).[39]

According to P. Nicolai, governmental authority is the ability to carry out certain legal actions or actions, namely actions or actions that are intended to cause legal consequences, and include the emergence and disappearance of legal consequences (het vermogen tot het verrichten van bepaalde rechshandelingen is handelingen die op rechtsgevolg gericht zijn en dus ertoe strekken dat bepaalde rechtsgevolgen onstaan of teniet gaan).[40]

Bagir Manan emphasized what terms and terminology are meant by governmental authority. According to him, authority in legal language is not the same as power (Macht). Power only describes the Right to do or not to do. Meanwhile, authority in law can simultaneously mean rights and obligations (Rechten en lichen). In the process of administering Government, rights contain

[36] Henry Campbell Clack, 1978, Black's Law Dictionary, Wes Publishing Co, Amerika Serikat, hlm. 121.

[37] H. Salim HS, *Penerapan Teori Hukum*, *Op. Cit*, hlm. 186.

[38] Aminuddin Ilmar, 2018, *Hukum Tata Pemerintahan,* cet. Ke-3, Prenadamedia Group, Jakarta, 77.

[39] F.A.M. Stronik dan J.G. Steenbeek.1985, *Inleiding in het Staars en Administratief Recht. Alphen aan den Rijn: Samson H.D*. Tjeenk Willink, hlm. 26.

[40] P. Nicolai et al. 1994, Bestuursrecht, Amsterdam, hlm. 4.

the notion of the power to self-regulate (zelfregelen) and self-manage (zelfbestuuren). At the same time, obligations mean the power to administer Government as it should. Thus, the substance of government authority is the ability to carry out governmental legal actions or actions (het vermogen tot het verrichten van bepaalde rechtshandelingen).[41]

From this description, it can be concluded that government authority is the power that exists in the Government to carry out its functions and duties based on statutory regulations. In other words, authority is the power that has a basis for taking legal actions or actions so that legal consequences do not arise, namely taking actions or arbitrarily making decisions in the context of public legal actions.

In practice, the Government's entire implementation of government authority is carried out. Without government authority, the Government will not be able to carry out an action or act of Government. In other words, the Government will not be able to carry out an action or act in the form of making a decision or policy without being based on or accompanied by government authority. If this is done, the intended government action or action can be categorized as an action or action without basis, aka an arbitrary action (legally flawed). Therefore, the nature of government authority needs to be determined and confirmed so that there is no abuse of government authority and arbitrary actions or actions.[42]

F. CONCLUSIONS AND SUGGESTIONS

1. Conclusion

Whereas the position of authority of the acting regional head in statutory regulations is regulated in Government Regulation Number 49 of 2008 concerning the third amendment to government regulation number 6 of 2005 concerning the election, approval of the appointment, and dismissal of regional heads and deputy regional heads, in Article 132A.

[41] Bagair Manan, 1996, *Bentuk-Bentuk Perbuatan Hukum Keperdataan yang Dapat Dilakukan Oleh pemerintah Daerah*, Makalah, Fakultas Hukum Universitas Pdjajaran, Bandung, hlm. 2.

[42] Aminuddin Ilmar, Hukum Tata Pemerintahan, *Op. Cit*, hlm. 82.

So, the circular letter of the Ministry of Home Affairs number 821//5492/S.J./2022, which gives authority to acting regional heads, creates a conflict of legal norms in the laws and regulations above it as well as in the hierarchy of statutory regulations that the type of circular letter is not included in a statutory regulation (regeling).

2. Suggestion

It is necessary to carry out legal reforms to Law Number 10 of 2016 concerning Regional Head Elections and make regional head election norms carried out through the DPRD to fill vacancies whose expiration period expires in 2022 and 2023. As well as make norms for regulating the term of office of regional heads. Those elected through the DPRD are only valid until the regional head is elected to implement simultaneous regional head elections in 2024. Or make the norm in Law Number 10 of 2016 to continue to carry out regional head elections whose term of office ends in 2022 and 2023, with a term the post of the elected regional head ends when the regional head is elected in the simultaneous post-conflict local election in 2024.

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