

RECONSTRUCTION TO THE ROLES OF VICE REGIONAL HEADS

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ABSTRACT

According to the fourth paragraph of the Preamble of Indonesian Constitution, the mandate of forming Indonesian government is to protect and to increase the society's welfare. Normative-empirically, Indonesian government consist of central government and regional government. In many ways, the unity form of central government become derivatives from the unity of regional government including head of government. In the central government, the head government led by a president who is helped by a vice president. Explicitly and imperatively, the vice president position is mandated directly by Indonesian Constitution. However, the method of filling position submitted to governance implementation. In practice, there are two methods, first, the filling position method for a head of government which is separated with the filling of president position. Second method, the filling position method for a head of government held simultaneously with the filling of president position. Both of those methods have been implemented well by People's Consultative Assembly or by people directly after Constitution amendment. Derivatives with the central government, regional government led by regional head for example a governor or a mayor. In the other hand, vice regional head position is different from vice president position. First, it isn't managed in the Constitution and second reason, the filling position can be imperative or non-imperative because the filling position is held according to the needs. The similar aspect is that the filling position of vice regional head position is derivative with the central government. It explains that vice regional head, separately or simultaneously, selected by central government, by Regional People's Representative Council, or by people.

Keywords: reconstruction, position, regional head, the filling

BACKGROUND

According to Ministry of Home Affairs data in 2010, there were 244 elected regional head pairs. As many as 93.85 percent of couples do not continue until the end of their tenure, only 6.15 percent complete the task together, the rest are "separated" in the middle of the road. According to the Minister of Home Affairs Gamawan Fauzi, more or less the fact of breaking up the joint venture would certainly disrupt the course of the government. The most recent evidence is the resignation of DKI Jakarta Vice Governor, Prijanto, and formerly Vice Regent of Garut, Dicky Candra.

When someone advances as a candidate both the regional head and vice regional head, of course on their own will to consciously advance in post-conflict local elections with other candidates and agree on who is the head and who is the vice or agreed when the partner is mediated by political parties. Each party should have known each other about their respective spouse candidates whether he is a party cadre or not, how political, social, and economic capital and public support. Furthermore, the two candidate pairs have also agreed to use the individual or political parties as well as a combination of political parties, including which party coalition will be used as a path to carry it in the post-conflict local election. At this point there seems to be no problem, as evidenced by the solidity of a couple when they want to win their candidacy in pairs in the post-conflict local election.

The problem arose after the inauguration and the two regional head entities and the vice regional head carried out their respective duties and authorities. From this point onwards the vice head of the region began to feel dissatisfied with the "portion" of his duties and authority. The accumulation of dissatisfaction with the "portion" of tasks and authority that was felt to be toothless and not nutritious was what later became a "time bomb" during his tenure. The more so if each regional head and vice regional head wishes to compete in their second term of office by fighting together as candidates for regional head. Lest a lot of candidates for vice regional head only understand how to fill the position of regional head and vice regional head in packages through direct elections, but from the start lacked even did not understand that the design of the tasks and authority of the regional vice head according to the regional government law so far has only been like "Spare tire" for regional heads.

The notion of the position of vice head of the region is like a "spare tire" in addition to triggering disharmony relations between the vice head of the region and the regional head, has also triggered a polemic about the existence of the vice head of the region itself around whether or not the position of vice head of the region is necessary. Some of them are of the view that the position of vice head of the region is still important because it needs to be maintained only the disharmony sources are finalized. Some others are of the view that the position of vice head of the region is not important because it is removed because the duties and authority can be handled by the regional secretary as well as for budget efficiency. The next issue is whether the method of filling the position of vice regional heads must be directly elected in pairs with the regional head or by being elected/ appointed separately with variants of certain conditions? This problem is interesting to study. This paper tries to examine the legal and political approaches.

DISCUSSION AND ANALYSIS

1. Central Derivatives in Region

Fourth paragraph Opening of the 1945 Constitution of the Republic of Indonesia is the first phrase that states to form an Indonesian state government that protects all Indonesian people and all Indonesian blood spills and to advance public welfare, educate the nation's life. Then the second phrase which states then compiled the independence of Indonesian nationality in a Constitution of the Indonesian State, which is formed in an Indonesian State Structure which is sovereignty of the people based on Pancasila. In the first phrase, the order is to form an Indonesian state government that protects and benefits the community. The Indonesian government is meant to be arranged in a central government unit, a regional government unit. Regional government units include provincial and district / city regional governments including village government units. In the second phrase, the order is a government based on the constitutional system, the Unitary Republic of Indonesia which is sovereign of the people and based on Pancasila.

In the central government unit, Article 4 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that in carrying out its obligations the President is assisted by one Vice-President. After the amendment of the 1945 Constitution, the President and Vice President are elected in a pair directly by the people. In the 1945 Constitution (pure), the derivative of the head of the central government unit in this case the president assisted by a vice president does not appear in the regional government unit. Article 18 of the 1945 Constitution (pure) does not explicitly mention either the existence of the head of regional government or the vice head of regional government. Only in the 1945 Constitution of the Republic of Indonesia after the amendment, the derivative of the head of the central government unit is referred to in Article 18 paragraph (4), namely the governor, district head and mayor as the head of the democratically elected regional government. At this point the derivative is limited to the central government unit led by the head of government called the President assisted by a vice president, while in the regional government unit led by the head of the regional government for the province is called the Governor, in the district is called the Regent, the city is called the Mayor. The 1945 Constitution of the Republic of Indonesia does not explicitly mention the derivative of the vice head of regional government. If the head of the central government unit led by the President is assisted by a Vice President directly elected in a pair by the people, then in the regions the head of the regional government unit is only democratically elected.

2. Application in the Laws

Application of the Articles of the Constitution governing the head of the central government unit including how to fill it in the 1945 Constitution (pure) in the new order can be known in TAP III / MPR / 1973 (revoked) and the head of the regional government unit in Law Number 5 of 1974 concerning Principles of Government in Regions (revoked). Searching for formations and ways to fill the head of government both at the central and regional levels during the new order under the 1945 Constitution (pure) is needed to compare the existence of other patterns from those now known and have already been applied.

Under the 1945 Constitution (original) Article 4, states that in carrying out its obligations the president is assisted by one vice president. Based on TAP II / MPR / 1973, the Procedures for the Election of President and Vice President of the Republic of Indonesia are introduced to the principles of filling the position of Vice President as follows:

- a. presidential and vice-presidential elections are held separately;
- b. presidential elections are held prior to the election of vice president;
- c. the election of the vice president is immediately held after the president swears and promises;
- d. candidates for vice president are proposed by the MPR factions in writing and submitted to the Chair of the Assembly (MPR) with the approval of the candidate concerned to be nominated and a written statement about the ability to cooperate with the President.

Law Number 5 of 1974 concerning Principles of Government in Regions as the implementation of Article 18 of the 1945 Constitution (purely) related to the arrangement of the position of vice regional head of the same spirit or derivatives of the post of vice president. The principles of the regulation are as follows:

- a. Vice Head of Region Level I is appointed by the President from civil servants who fulfill the requirements;
- b. by obtaining the approval of the DPRD without going through an election, the Governor of the Regional Head submits a candidate for Vice Regional Head level I to the President through the Minister of the Interior;
- c. Vice Heads of Regions Level II are appointed by the Minister of Home Affairs on behalf of the President of civil servants who fulfill the requirements;
- d. by obtaining the approval of the DPRD without going through elections, the Regent / Mayor of the Regional Head submits a candidate for Vice Regional Head Level II to the Minister of the Interior through the Governor of the Regional Head;
- e. filling the position of vice regional head is done according to need;
- f. vice regional head is a state official;
- g. the vice regional head assists the regional head in carrying out his daily duties and authority in accordance with the guidelines set by the Minister of the Interior;
- h. if the regional head is absent, the vice regional head carries out the daily tasks and authority of the regional head.

Thus the existence of the position of vice regional head according to Law 5/1974, according to needs, is a state official who was appointed from a civil servant (at that time the civil servants could be the TNI), his job as a "helper" regional head as well as "spare tire" when the regional head was unable to attend.

After the reformation, with the issuance of Law Number 22 of 1999 concerning Regional Government, the spirit of broad autonomy is reflected in the considerations of the law:

- a. that in the implementation of regional autonomy, it is deemed necessary to put more emphasis on the principles of democracy, community participation, equity and justice, and pay attention to the potential of regional diversity.
- b. that in facing developments in the situation, both at home and abroad, as well as the challenges of global competition, it is deemed necessary to carry out regional autonomy by giving proportional, broad and accountable authority to the regions proportionally, which is realized by the regulation, distribution and utilization of resources national and regional and regional financial balances, in accordance with democratic principles, community participation, equity and justice, as well as regional potential and diversity, implemented within the framework of the Unitary Republic of Indonesia.

Broad autonomy to the regions makes the responsibility on the shoulders of a regional head heavy, so the design of this law explicitly imperative requires the position of vice regional head in addition to the regional head. The principles concerning the vice head of the region in this law are as follows:

- a. each region is headed by a regional head as the chief executive who is assisted by a vice regional head;
- b. filling the positions of regional head and vice regional head are carried out by the DPRD through concurrent elections;
- c. the regional head of the province is called the governor because his position is also as a representative of the government;
- d. in carrying out their duties and authorities as regional head, the Governor / Regent / Mayor is responsible to the DPRD;
- e. in the position as representative of the government the Governor is under and is responsible to the president;
- f. regional heads must submit accountability to the DPRD at the end of each fiscal year;
- g. regional heads must submit accountability to the DPRD at the end of each term of office;
- h. Regional heads must submit accountability to the DPRD for certain matters at the request of the DPRD.

Sanctions against the rejection of the responsibility of the regional head both at the end of the fiscal year, the end of the term of office, and for certain cases is a refusal by the DPRD which may result in a termination proposal and the relevant regional head cannot be nominated again in the next term.

Specifically relating to the duties of the vice head of the region according to the law are:

- a. assisting regional heads in carrying out their obligations;
- b. coordinating the activities of local government agencies; and
- c. carry out other tasks given by the regional head.
- d. Vice Regional Head is responsible to the Regional Head;
- e. the vice regional head carries out the duties and authority of the regional head if the regional head is unable;
- f. if the regional head is unable to remain permanent, the position of regional head is replaced by the vice regional head until his term of office expires;
- g. if the vice head of the region is unable to remain, the position of vice regional head is not filled.

Thus, since the reformation, through the decentralization politics drafted in Law 22/1999, concerning the existence of the position of vice head of the region has begun to apply thought:

first, the position of vice regional head explicitly imperative must be held. The formation of the position of vice head of the region is only one who has the position of vice head of region as the chief executive. A vice head of the region only has the task of helping and coordinating, not policy makers. However, actually there is an entrance for a vice head of region to have independent tasks in the case of other assignments given by the regional head. This condition, of course, still depends on the kindness and trust of the vice regional head. The new vice head of the region functions only when the head of the area is unable to remain more or less able to remain.

Second, in terms of accountability, the vice head of region is not legally and politically responsible even though administratively taking responsibility. Evidenced by the pattern of accountability of regional heads when rejected and the result was the dismissal was only for regional heads, not including the vice regional head.

Third, in terms of filling in his position, indeed the position of vice regional head must be elected simultaneously / in pairs with the regional head by the DPRD. This means that the weight of DPRD support is normatively the same for both candidates, although it may be politically different and the weight of support may be greater for the vice head of the region. But what's interesting is that when the vice head of the region is unable to remain, the position is left blank and not filled. This means that even in the situation of being forced to hold the position of vice regional head, there is no problem.

Therefore, since Law 22/1999, the existence of the position of vice regional head is more advanced as a derivative from the position of vice president, both from the explicit imperative side that must be held as well as from the way of filling in which must be done simultaneously / in pairs with the regional head. What is still considered a spare tire is that its function is only as a helper, it rises when the regional head is unable to remain permanent, and if the vice head of the regional head is unable to be filled and is free from legal and political responsibility because it is not a determinant of regional policy.

In the course of time, Law 22/1999 was replaced by Law 32/2004. The principles relating to the regulation of vice regional heads according to this law are as follows:

- a. a regional head is assisted by a regional vice head;
- b. regional head and vice regional head are elected in one pair directly.

In connection with the duties of the vice head of the region, this law states that the vice head of the region is tasked with:

- a. assisting the regional head in organizing regional government;
- b. assisting regional heads in coordinating the activities of vertical agencies in the regions, follow up on reports and / or findings of supervision results, carry out empowerment of women and youth, and work towards the development and preservation of socio-culture and the environment;
- c. monitoring and evaluating the administration of district and city governments for the vice head of provincial region;
- d. monitoring and evaluating the administration of sub-district, village and / or village administration for the vice head of regency / city area;
- e. providing advice and consideration to the regions in carrying out local government activities;
- f. carrying out other governmental tasks and obligations given by regional heads; and
- g. carrying out the duties and authority of the regional head if the regional head is unable.
- h. Vice Regional Head is responsible to Regional Head;
- i. Vice head of the region replaces the regional head until his term of office expires if the regional head dies, stops, is dismissed or is unable to carry out his obligations for 6 months continuously in his term of office.
- j. if there is a vacancy in the position of vice head of region whose remaining term is more than 18 months, a regional head proposes 2 vice regional head candidates to be elected by the DPRD based on the proposal of a political party or a combination of political parties whose pairs of candidates are elected in the election of regional head and vice regional head.

Thus, according to Law 32/2004, regarding the existence of the position of vice regional head, the existence that has started since Law 22/1999 is maintained with the development as follows:

- a. *First, the* position of vice regional head is explicitly imperative must be held. The new vice regional head functions when regional head is unable to remain. It could actually be that a vice regional head is given a certain role but again must depend on the trust and generosity of regional head.
- b. *Second, in terms* of accountability, legally and politically it only rests with regional head.
- c. *Third, in terms* of filling his position, the position of vice regional head must be elected simultaneously / in pairs with the regional head directly by the people in the post-conflict local election. This can be interpreted as true support and public trust in the spouse, both the regional head and his vice. Thus, it can be said that the political legitimacy of the people is in both of them as a couple, it cannot be claimed that only the regional head or his vice has the support of the people.
- d. The difference is with Law 22/1999, when vice regional head is unable to remain in accordance with Law 32/2004, the position must be filled through elections by the DPRD. Once again, it means that under forced conditions, the legitimacy of elections by the DPRD is considered to be the same value as the legitimacy of direct elections by the people based on a system of political representation.

How to fill positions according to Law 32/2004, where regional heads and vice regional heads are directly elected by the people in the post-conflict local election and are proposed by political parties or political parties combined and can be through individual channels, unfortunately bringing excesses or side effects, namely the filling method is capitalistic. This means that a pair of regional head candidates who want to advance must have calculated the capital or costs that are not small. In socio-political-economic terms, the method of filling pair positions will reduce the burden borne by each of the candidates for regional head and vice regional head. It seems that what was not realized from the start was power sharing which normatively regulates the limitations of authority for regional heads even though the law mandates their existence to be explicitly imperative.

3. Future Reconstruction

Concerning this issue, it is interesting to cite the opinion of Agus Muhamad (Lampung Post 14 / 2-2012). There are several mechanisms that can be taken to revitalize the role of the vice head of the region. **First**, improve the authority of the vice regional head specifically in the Act. Then, it is clarified technically through government regulations and presidential regulations. For example, a vice head of region is given authority in charge of internal bureaucracy, while the authority of regional head deals with investment and development. **Second**, it is to improve the selection mechanism. With the same legitimacy as the head of region, vice head of region is very reasonable demands the same role. Candidates for regional vice heads should not be selected in a package with regional head candidates. Article 18 Paragraph (4) of the 1945 Constitution only emphasizes the democratic election of governors, regents and mayors. There was absolutely no mention of the election of vice governor, vice regent, and vice mayor. Moreover, directly selected in one package. Vice regional head may be elected regional head in accordance with certain requirements. **Third**, make a work contract. It is better for the elected regional head and vice regional head to make a contract or work agreement before being appointed. No matter how unusual, this can avoid bias in the legislation. In the contract document, it is stated what must and can be done by the Vice Regional Head. Or just delete it. The options offered in the revision of the Regional Government Law relating to the position of vice head of the region, in addition to improving the electoral system also relate to the removal of the position of vice regional head. This can be an alternative to breaking the deadlock. In terms of role, the position of vice regional head is not very meaningful in development. Actually, it is not a problem if the role of the vice head of the region is carried out by the regional secretary, regional vices, or expert staff of the regional head. After all, so far the regional head often gives the task disposition not to his representative if he is unable to attend. In addition to avoiding the financial burden on the regions for the needs of salaries, benefits, pensions, and operational needs, the elimination of the position of vice regional head can also minimize conflicts.

The Draft Law on Regional Government which is being discussed jointly by the government and the DPR, relating to the position of vice regional head, among others, regulates:

- a. Article 41 (1); regional head as referred to in Article 36 paragraph (1) may be assisted by the vice regional head.
- b. Paragraph (2); vice head of region as referred to in paragraph (1) is called vice governor for province and vice regent / vice mayor for district / city.
- c. Paragraph (3); Province with a population:
 - 1) up to 5 million people do not have a Vice Governor.
 - 2) More than 5 million to 10 million have 1 (one) vice governor.
 - 3) more than 10 million people have 2 (two) vice governors.
- d. Paragraph (4) Regencies / cities with a population:
 - 1) up to 100,000 people do not have a vice regent / mayor.
 - 2) more than 100,000 people have 1 (one) vice regent / mayor.
- e. Article 42 paragraph (1); vice governor as referred to in Article 41 shall be appointed by the President of a Civil Servant who meets the requirements.
- f. Paragraph (2); governor submits a candidate for vice governor 2 (two) times the number of vice governors to the President through the Minister.
- g. Paragraph (3); vice regent / vice mayor as referred to in Article 41 shall be appointed by the Minister on behalf of the President from the Civil Servants who meet the requirements.
- h. Paragraph (4); regent / mayor submits a candidate for vice regent / vice mayor 2 (two) times of the number of vice regents / vice mayors to the Minister through the governor.
- i. Article 47 paragraph (2) letter d. The requirements for the group / rank of vice regional head are Civil Servants with a rank of at least IV / for vice regional head c for vice governor and IV / b for vice regent / vice mayor.
- j. Article 49 (1); vice head of region has the tasks of assisting regional head to:
 - 1) carry out supervision of regional government;
 - 2) coordinate the activities of vertical agencies in the regions;
 - 3) monitor and evaluate the administration of district and city provincial governments; and

- 4) monitor and evaluate the administration of government in the sub-district area for the vice head of the regency / city area.
- k. Paragraph (2) In addition to carrying out the tasks referred to in paragraph (1) the vice head of the region carries out other governmental tasks and obligations granted by the regional head.

Thus, the reconstruction of the position of vice head of the region through amendment of Law 32/2004 will continue to maintain the existence of the position of vice regional head, even empowering his role, but the method of filling it is done separately based on the proposal of the regional head and must be from civil servants who meet certain conditions, especially the requirements of groups / rank

Closing

In view of the increasingly broad implementation of regional government, the increasingly heavy responsibilities of regional heads due to the unavoidable demand for disclosure of information and public services, the practice of organizing government especially regional government leaders consisting of regional heads and vice regional heads still needs to be maintained. . The issues are the *power sharing* between the regional head and vice regional head and how to fill them is what needs to be reconstructed.

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