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The Authority of the Head of Regional Government on the Appointment, Transfer, and Dismissal of State Civil Servants Apparatus on the Administration of Local Government

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Abstract
The base of authority held by the Head of regional government on the appointment, transfer, and dismissal of state civil servants apparatus on the administration of local government, based on research in the Local Government Act is not regulated/ruled yet. This is as in the provisions of Article 211 of Act on Local Government that also affirmed in Article 235 of Act on Local Government. The base of authority to exist when the Head of Regional government received the delegation of authority from the President, under Article 53 e of Act onState Civil Law Reform. The scope of the authority held by the Head of Region as the Supervising Apparatus on Regional Employees by the Act on Local Government, in the implementation of Government's Affairs assisted by the regions, were filled by employees of State Civil Apparatus (Article 208), in the appointment of officials of State Civil Apparatus, the Head of Region inaugurated Heads of Regional institutionsbased on the result of selection according to the provisions of legislation.
The method used in this research is normative juridical research using primary, secondary, and tertiary legal materials through legislation approach, historical approach, and conceptual approach to perform the method of analysis of legal materials by using qualitative juridical analysis, namely by collecting and gathering materials so as to explain the system in delivering justice, legal certainty and effectiveness of the authority of the Head of Region in the appointment, transfer, and dismissal of employees of State Civil Apparatusin the administration of Regional Government
Keywords : Authority, Head of Region, State Civil Apparatus

1. Introduction

The tug of government affairs is a matter that does not solely occur in Indonesia, but in many countries of the world. In the context of Indonesia at this time, the authority on the appointment, transfer, and dismissal of the State Civil Servants in the Administration of Regional become one of the important issues.[1] One tangled in this matter due to Government's Regulation No. 9 of 2003, on the Authority of Appointment, transfer, and Dismissal of Civil Servants juncto Government's Regulation No. 63 Year 2009 on the Amendment to Government Regulation No. 9 of 2003 on the Authority of Appointment, Transfer, and Dismissal of Civil Servants to currently used as the base by the Head of Region on the Appointment, Transfer, and dismissal ofState Civil Apparatus (hereinafter SCA) employee.
In fact, Government's Regulation No. 9 of 2003 is the implementation of Act No. 22 Year 1999 on Regional Government, while Government's Regulation No. 63 of 2009 implements Act No. 32 of 2004. Both of those regulations are influenced by the spirit of broad regional autonomy. On the other hand, Act No. 23 of 2014 on Regional Government does not give authority to the Head of Region in terms of appointment, transfer, and dismissal SCA employees.[2]The Head of region "may" has power over the appointment, transfer, and dismissal of SCA employees in Article 53 paragraph e in the Act No. 5 of 2014 on the Reform of State Civil Apparatus (SCA), which the President may delegate the appointment, transfer, and dismissal of SCA employees.
Law on Local Government in Indonesia since the days of independence has repeatedly experienced alterations. The first is Act No. 1 of 1945 on the Status of the National Committee of Regions, until the last Local Government Act, that is Law No. 23 Year 2014, as lastly amended by Law No. 9 of 2015.
Regional's employment is contained in Law No. 5 of 2014 concerning the State Civil Apparatus.[3]The law before the Act Number 43 Year 1999 concerning the Fundamentals of Civil Service has mandated decentralization of personnel, establishment of Regional Civil Servants (RCS) which in essence is to delegate authority to the Regional Government. Yet, in fact on current conditions, still put the management authority of Indonesian Civil Servants on the hands of Central Government.
In any case of authority problems, under Article 208 paragraph (1) of Act Number 23 Year 2014 on Regional Government, stated, "Head of RegionalGovernment and Regional Parliament, in holding government affairs, are assisted by the regional apparatus. While the provisions of Article 209 paragraph (2) states, "The apparatus of region consists of Regional Secretariat, the Secretariat of Parliament, inspectorates, departments, agencies, and districts". As in the case of guidance and control of the regional apparatus is carried out by central government to the provinces and by the Governor as the representative of

[1]Evidence that this issue becomes important issue is that Regional Evaluation Council supervised Special Act No. 5 of 2014 concerning State Civil Apparatus
[2]See Article 211 and 235 of Act Number 23 Year 2014 on Regional Government
[3]Act No. 5 of 2014 on Civil State Apparatus, which was ratified on January 15, 2014, states that at the time of the Act No. 5 of 2014 on Civil Apparatus entered into force, hence the Regional Personnel set forth in Chapter V of Act No. 32 of 2004 on Regional Government, the latest by Law No. 12 of 2008 and its implementing regulations, is repealed and declared to be invalid.

Central Government to regencies / cities as arranged on the provisions of Article 211 of Act Number 23 Year 2014 on Regional Government. Thus the Head of Regional Government (regency / city) does not have any authority with regard to the guidance and control of regional apparatus based on the Local Government Act.[1]

The lack of power in the Head of regencies / cities is mentioned by the Article 235 of Act No. 23 of 2014 on Regional Government, said, "The head of regional government appoints and / or inducts the Head of the regional apparatus based on the selection results, if the Head of Regional Government refused to appoint and / or induct, then Minister shall appoint and / or induct the head of the apparatus in provincial level and Governor as the representative of Central Government appoints and / or inducts Head of apparatus in the level of regencies / cities "

Thus, researcher argues, that the authority of managing Regional State Administrative apparatus is under the authority of Central Government, as mentioned in Article 211 paragraph (1) of Act 23 of 2014 on Regional Government. It is certainly different from the provision in Article 53 paragraph of act No. 5 of 2014 on Civil State Apparatus, which states "set the appointment, transfer, and dismissal of State Civil Apparatus besides high officials of major and mid-level officials, and officials of major functional expertise by Mayor as Supervising Apparatus ofEmployee, after receiving a delegation of authority from the President".

Completely the provisions of Article 53, Act. No 5 of 2014 reads;

President, as the highest authority insupervising SCA, may delegate authority to set the appointment, transfer and dismissal of officials other than the head of office of the main high and mid-level, and officials of major functional expertise under the office of:

a. Finance minister;

b. Leaders of institutions in non-ministerial government institution;

c. Secretary general of the Secretariat of State institutions and nonstructural institutions;

d. Governor of the province, and

e. Regents / mayors in regencies / cities.

Therefore, in the opinion of researcher, the authority of Regional Head (regent / mayor) on both these laws pose a meaning that is not clear or meaning hazy or vague norm,[2] within the meaning in the Act No. 23 Year 2014 on Regional Government, that the Headof Region does not have authority on guidance and control arrangement of Regional apparatus, while in Act No. 5 of 2014 on the Reform of Civil State, the Head of Region has the authority after receiving a delegation of authority from the President as Supervising Apparatus of Employee in the appointment, transfer, and dismissal for other than the post of head of office in the main high and mid-levels, and functional official of primary expertise.

2. Research Method

The method used in this research is normative juridical research using primary, secondary, and tertiary legal materials through legislation approach, historical approach, and Conceptual approach by performing legal material analysis method, that used juridical qualitative analysis.

3. Theoretical Outline

The discussion on the framework of theoretical thought was intended as an attempt to analyze some of the issues outlined in this dissertation proposal, therefore framework of theoretical thought is a collection of theories that have been selected as the analysis knife of the existing problems, that researcher selected seven theories that are tailored to the issues, they are: the theory of authority, theory of local autonomy, theory of justice, theory of human rights, and the theory of bureaucracy.

3.1. theory of Authority

Ateng Syafrudin argued that is a difference between understanding power and authority. He argued that there is a need to distinguish between authority (authority, gezag) with power (competence, bevoegheid). Authority can be interpreted as so-called formal power, the power obtained from the power given by law, while power is only an "onderdeel" (parts) of certain authority. Contained within authority is competences (rechtsbevoegdheden). Authority is in the scope of action of public law, the scope of government power, not only includes the authority in making decisions by government (bestuur), but also includes the authority for the implementation of tasks, and provide authority and distribution of primary authority specified in legislation. Legally, the authority can also be defined as the ability granted by laws to give rise to legal consequences.[3]

[1]The provisions of Article 211 paragraph (1) Act No. 23 Year 2014 on Regional Government, referred to "foster and control the arrangement of the Region, Central Government for province and by the governor as a representative of Central Government, for regencies/cities.

[2]R. DiahImaningrum, Post Graduate Dissertation Research Proposal inBrawijaya University, in 2012, page 8, the description is: In addition he rolled juridical problems, which cannot be determined "what is the ruling" properly (legal indeterminacy), is likely due to legal indeterminacy by several factors, among others: the vagueness of meaning (vagueness), doubled meaning (ambiguity), inconsistency (inconsistency), and the concepts are fundamentally at odds or competing, called Gallie as evaluative openness, or concepts that are still open for evaluated.

[3]Indroharto, Asas-Asas Umum Pemerintahan yang Baik, in Paulus Efendie Lotulung, Himpunan Makalah Asas-Asas Umum

3.2. Theory of Regional Autonomy

The term of autonomy is etymologically derived from the Greek word "autos" meaning by himself and "nomos" which means law or regulation, while according to the Encyclopedia of Social Science, autonomy within the meaning of the original is the legal self-sufficiency of social body andits actual independence. So basically there are two characteristics on the nature of autonomy, i.e. legal self-sufficiency and actual independence. When linked with politics or government, regional autonomy or self-government 'has the meaning of condition of living under one's own law. Thus, regional autonomy that has a legal self-sufficiency is self-government regulated and managed by its own laws.

The term itself has a meaning of autonomy or independence, but not independence in the meaning of boundless freedom which is the manifestation that implies the existence of a chance, but must be accounted for. In granting the responsibilities,it contains two elements, they are:

a. Assignment of tasks in the form of a number of jobs that must be completed and the authority to carry it out;

b. Reposal which form the authority to consider, define, and implement their own task and how to accomplish it.

In another part, Bagir Manan[1] declared that autonomy is, "Freedom and independence (vrijheid and zelfsatndigheid) for the lower units of government to regulate and manage the government's affairs". Government's affairs that might be organized and administered freely and independently becomes or is a domestic affairs by lower governmental units. Freedom and independence of self-governance is the autonomous nature of the content. Freedom and independence in autonomy does not mean boundless. This freedom and independence is a bond of freedom and independence in the greater unity. Autonomy is just a subsystem of a larger unified system. In terms of constitutional law, particularly in the theory of state forms, autonomy is a subsystem of a unitary state. Autonomy is a phenomenon of a unitary state. All the understanding, and that is contained in autonomy, is the meaning and content of unitary state. Unitary state is premised on the meaning and content of autonomy.

3.2. theory of Justice

Majid Khadduri classifies the main principles of justice into two categories: substantive aspect and procedural aspect, each of which covers a different aspect of justice. The substantive aspects is in the form of elements in the substance ofShari'ah justice (substantive justice), while procedural aspect is such as the elements of procedural fairness in the law that had been implemented (procedural fairness). When procedural rules are ignored or applied incorrectly, then procedural unfairness arises. Substantive justice is an internal aspect of law where all the obliged actions are certainly fair (because of the word of God) and the forbidden are certainly not fair.

According to N.E. Algra, fairness is a matter of all of us and in with a community, each member is obliged to carry out justice. People should not be neutral in the event of an unfairness.[2] Furthermore, Aristotle in The etnics of Aristotle, translation by J.A.K Thomson, in the fifth book, Chapters I-IV, p. 139-150, edited by S. Tasrif, said that when people talk about certainty, which they consider to be definitely the presence of justice in their mind, is when it encourages them to do deeds fair, to be fair, and do not want things that are not fair.[3]

3.3. Theory of Human Rights

Etymologically, human rights (HR) is a right held by a person because of his/her existence of humanity. In terminological, human rights are the natural rights of man possessed since birth, so that the rights inherent in human beings essentially.[4] Margaret A. Schuler also defines human rights as the basic rights of every human being as the matter of humanity.[5] Meanwhile, John Locke and Montesque believe that every human being has the inherent right that can not be revoked by anyone and can not be transferred to anyone.[6] In other words, the basic rights is the inherent right of every person who could not be bothered and revoked by anyone, since such rights already exist along with its existence as a human being, or and the terminology from clergy is a basic rights granted by God for the man who cannot be bothered by anyone.

3.4. theory of Bureaucracy

Bureaucracy is derived from the word "bureau" which means a desk or office; and the word "kratia" (cratein) which means the government. Originally the term was used to appoint a systematic work activities regulated by an agency through the activities of the administration. In English concept in general, bureaucracy is called "civil service". In addition it is often referred to as the public sector, public service or public administration.[7]

Said Weber, bureaucracy was the power system, in which the leader (superordinate) practicing control over the employees (subordinate). Bureaucratic system emphasizes the aspect of "discipline". "Therefore, Weber also enter the bureaucracy as a rational-legal system. Legal, therefore,the subject to the rules of writing and may be listened to by anyone. Rational means that it can be understood, studied, and a clear explanation of cause and effect. Weber noticed the phenomenon of the superordinate control over the subordinate. In implementing the control, restrictions are applied if something is not done, resulting in the accumulation of absolute power in the hands of the superordinate. So the result, organizations will no longer run rationally but as merely desired by the leader.

Pemerintahan yang Baik, Citra Aditya Bakti, Bandung, 1994, page 65

[1] Abdul Sabaruddin, Desentralisasi Dan Otonomi Daerah: ArahMenujuPemerintahanYangBaik,in www.abadiah.wordpress.com, accessed on 13 April 2010.

[2]LiliRasjidi and B. AriefSudharta, FilsafatHukumMazhabdanRepleksinya.RemadjaKarya, Bandung, 1989, page 25.

[3]Idem, page 25.

[4]Free Penal Law of the Republic of Indonesia and the Decree of the People's Consultative Chamber of the Republic of Indonesia, the Secretariat General of MPR RI, Jakarta, 2011, pp. 234

[5] HarumPudjiarto, HakAsasiManusia: KajianFilosofisdanImplementasinyadalamHukumPidana di Indonesia, UniversitasAtmajaya,Yogyakarta, 1999, page 25.

[6] Moh. Dahlan, Konsep HAM MenurutPemikiranAbdullahi Ahmed An-Na'tm, Doctoral Thesis, IAIN SunanKalijaga,unpublished paper, Yogyakarta, 2003,page 22.

[7]KristianWidyaWicaksono. AdministrasidanBirokrasiPemerintah. GrahaIlmu,Jakarta, 2009, page 32.

3.5. The Theory of Politic of Law

The theory of politic of law is as a mean of achieving social justice in a law, including the Law on SCA and the Law on Local Government as a means of creator to justice. In line with the above opinion, Philippe Nonet and Philip Selznick in his book Selection of Responsive Law in a transition Period, said that Responsive law approach is expected to help solve problems that occur in the community. The purpose of law must be really for the welfare of the society. Nonet and Selznick through the responsive law, sees the law as a mean of response to social regulations and aspirations. By their very nature which are open, then the law of this type is able in accommodating it to receive and promoting changes in social reforms in order to achieve justice and public emancipation.

The legal order of responsive law emphasizes:[1] (i) Substantive Justice as the basic legal legitimacy, (ii) Regulation is a sub-ordination of the principles and policies, (iii) legal consideration should be oriented on the goals and effects for the benefit of society, (iv) use of discretion is highly recommended in making legal decision to make it remain goal-oriented, (v) Nurture the system of liability instead of coercion, (vi) morality cooperation as moral principles in enforcing the law, (vii) power is utilized to support the vitality of law to serve the public, (viii) the rejection of law must be seen as a lawsuit against legal legitimacy, and (ix) access is widely opened for public participation in the context of legal advocacy and social integration.

4. Result and Discussion

4.1. Governance Administration

In general reforms of governance, since the enactment of Act on Regional Government, namely the Act No. 22 of 1999, Act no. 32 of 2004, and the Act No. 23 of 2014. These three changes bring about basic changes in the system authority of Central Government and Local Government (both Provincial and regency/city). The principle of local autonomy will be more complete, especially for regency/city that is the larger, real, and responsible authority of autonomy.[2]

The authority of autonomy is the freedom to govern. While real autonomy is the freedom to organize their authority in the field of governance, which should be based on the fact to the necessity and growth that live and thrive in the area. Responsible autonomy, as a consequence of granting the right and authority to the regions in the form of duties and obligations to be borne by the region in achieving the objective of granting autonomy, is by increasing the service and welfare of the community to be getting better, developingthe democratic life, enhancing justice and equality as well as the maintenance of harmonious relationship between central government and the regions as well as between each regions in order to maintain the integrity of the Unitary Republic of Indonesia.[3] The system of governance in Indonesia actually is based on Article 1 paragraph (1), (2), and (3) of the Constitution ofthe Republic of Indonesia year 1945, where the governance should be based on the principle of unitary state, sovereignty of the people, and the principles of Law.

4.2. The Authority of the Head of Regional Government as the Supervising Apparatus of Employee in the Region According to the Law of Regional Government

As mentioned in Article 1 paragraph 2 in the of Regional Government, which referred to Local Government is the implementation of government's affairs by regional governments and parliaments of the region in accordance to the principles of autonomy and the duty of assistance with the principle of broad autonomy within the system and the principles of the Republic of Indonesia as intended in the Constitution of the Republic of Indonesia Year 1945. "in thegovernance of regions that performed by local government that leads the implementation of government's affairs under the authority of the autonomous region.

The definition of Local Government under Article 1 paragraph 3 of Act No. 23 of 2014 on Regional Government is the Head of Regional Government. As the organizer of government's affairs in the region,the Head of Region is assisted by local instruments based on the principle of decentralization, deconcentration, and assistance.

The policy of decentralization and regional autonomy is contained in the Constitution of the Republic of Indonesia Year 1945, Article 18:

(1) The Republic of Indonesia is divided into provincial regions, and the area of the province is divided into regencies and cities, which each provinces, regencies, and cities have local government, which is regulated by law;

(2) The Governments of provinces, regencies, and cities set up and manage their own affairs in accordance with the principle of autonomy and the duty of assistance;

(3) The governments of province, regency, and city have a regional council whose members are elected through general elections;

(4) governors, regents, and mayors respectively as the Head of the Government of Province,Regency, and city that elected democratically;

(5) Local Government runs the broadest possible autonomy, except in the matter of government'saffair that defined by law as the affairs of Central Government;

(6) The local government has the right set of local regulations and other regulations to implement its autonomy and duty of assistance;

(7) The structure and procedure of maintaining governance are set out in legislation.

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[1]Bernard L. Tanya, dkk, TeoriHukum, StrategiTertibManusiaLintasRuangdanGenerasi, Genta Publishing, Yogyakarta, 2006, page 103

[2]Sedarmayanti,. ReformasiAdministrasiPublik, ReformasiBirokrasi, danKepemimpinanMasaDepan (mewujudkanPelayanan Prima danKepemerintahan yang Baik),PT. RefikaAditama,Bandung, 2010, page 319

[3]Id. Page 319

Regional Autonomy, in Article 1 paragraph 6 of Act No. 23 year 2014, is "the rights, powers and obligations of autonomous regions to set up and manage their own affairs in administration and public interests within the Unitary State of the Republic of Indonesia." Decentralization is often uttered in conjunction with the implementation decentralization by government, or decentralization is often equated with the granting of autonomy to regions. According toMiftahThoha, decentralization is equated with the granting of regional autonomy, because it is expected that the implementation of decentralization to local government can encourage regions to be autonomous (independent) in conducting the affairs of the main tasks of the welfare of the society at its own. This condition is in the sense of developing and managing economic resources and potential resources of the regions separately for community's interests.[1]

In the concept of Unitary State as stipulated in the Law on Local Government, the power and functions of government is in the hands of Central Government. While the authority and function that lived and owned by local government is run based on the principles of decentralization, deconcentration, and assistance, as provided for in Article 5 (4); "the Implementation of Government's Affairs referred to in paragraph (2) to the regions is carried out based on the principles of Decentralization, Deconcentration, and Assistance."

4.3. Linkage on the authority of the Head of Region as the Supervising Apparatus of Employee in the Region, according to the Act No. 23 Year 2014 on Regional Government by Law No. 5 of 2014 on the State Civil Apparatus

Authority of the Head of Region as the Supervising Apparatus of employee in the Local Government Act is not mentioned, that the guidance and control of the regional arrangement is made by Central Government (Article 211 Act of Regional Government). The process of appointment of the head of the regional holding positions administrator is made through the selection according to the selection process for leadership positions higher supreme in the institutions of the Regions, as stipulated in the law regarding the apparatus of civil state, it is mentioned in Article 234 paragraph (4) in the Act of Local Government.

Head of Region as the official authority of Supervising apparatus of employeeis reflected in the Act of SCA, under Article 53 e that states; "President as the highest authority of supervising Apparatus of State Civil servants my delegate the authority to set appointment, transfer, and dismissal of SCA other than the Head of offices for the main high and mid-level, and officials of major functional expertise to: regent/mayor of the regency/city." The authority given by President to the Head Regional Government as the Supervising Apparatus of employee is not decisive because there is word can be, not as stipulated in Article 25 of Act on SCA that also regulates the devolution of the delegation of power, as mentioned in paragraph (1): "the President as the holder of the power of government has the highest authority in policy, supervising profession, and Management of SCA; Paragraph (2): "For organizing authority as referred to in paragraph (1) President delegates some authorities to the Ministry of Administrative Reform and Bureaucratic reform (Minister of State's Apparatus Empowerment and Reformation of Bureaucracy), the Commission for Administrative Civil State (CACS), Institute of Public Administration (IPA), and the Civil Service Agency (CSA).

In the above provision The Head of Regional Governmentas The Supervising Apparatus of employment is uncertain, or more correct to say vague, giving rise to multiple interpretations in practice, this provision is actually in the legislation governing the employment in the region previously also reads thus. the principle of legality which is one of the main principles that serve as the foundation of any government organization in a state of law, which specifies all the provisions that bind citizens that must be based on law, becomes questionable.

According to BagirManan, governance is based on the principle of legality, which means based on legislation (written law), in practice it is inadequate especially in a society that has a high level of dynamics. This is because they contain a written law that always possess weaknesses of various congenital malformations and made defects. Further stated as follows:[2]

"As a written rule or a written law, legislation has a limited range, which is a "moment of hospitalization"of the elements of the political, economic, Social, cultural, and security of the most powerful at the time of formation. It is, therefore, easy to worn-out (out of date) when compared with changes in society's increasing growthrapid or accelerated. Establishment of legislation, especially law has equivalent as growing arithmetically, whereas changes in society has increased as a geometrical progression. The inaction growth of legislation which is a congenital defects, can also be worsened by various forms of artificial defects, resulting from the entrance or inclusion of the policies or actions that interfere with the legislation as a system. "

Weaknesses in the management of employee arrangements particularly against the appointment, transfer, and dismissal of State Civil Apparatus by the Head of Regional Government as the Supervising Apparatus of Employee causes problems. The authority is acquired by the Head of Region from the President as supervising apparatus of employee by the way of delegation. Devolution of government's powers through this delegation in the State administrative law has the following requirements:[3]

a. Delegation must be definitive and the giver of delegation (delegan) can no longer use their own authority that has been delegated.

b. Delegation should be based on the provisions of the legislation, meaning that the delegation is only possible if there is a provision for it in legislation.

c. Delegation is not to subordinates, meaning that the hierarchical relations of personnel are not allowed to the delegation.

[1]MiftahThoha, BirokrasiPemerintah Dan Kekuasaan Di Indonesia, Op Cit, page 131
[2]Bagir Manan, Peraturan Kebijakan, papers, Jakarta, 1994, hlm. 1-2
[3]Philipus M. Hadjon, Tentang Wewenang,Op Cit,page 9-10

d. The obligation to provide information (explanation), it means delegan has an authority to seek clarification on the implementation of this delegation.

e. Regulatory policy (beleidsregel), meaning that delegan provides instruction (manual) on the use of those powers/authority.

Delegation of authority is also regulated in the Act Number 30 Year 2014 on Government Administration in Article 13, which quoted as follows:
(1) Delegation of Authority, is established based on the rule of legislation;
(2) Institutions and/or Government officials have the authority through delegation when;

a. Awarded by the Institution/Government Officials to the other institutions and/or other Government officials;

b. Stipulated in Government Regulation, Presidential Regulation, and/or regional regulation, and;

c. A delegation of authority or have previously existed.

Examining the delegation of authority to the Head of Region in the appointment, transfer, and dismissal of State Civil Apparatus that has no laws that govern it, in comparison to the authority of delegation given to the Ministry of internal affairs, there is devolution of authority through the Minister of Internal Affairs Number 34 Year 2010 of the Delegation of Authority to Appoint, Transfer, and Dismiss Civil Servants in the Environment of Ministry of Internal Affairs, as a follow up of Government Regulation No. 9 of 2003 on the Authority of Appointment, Transfer, and Dismissal of Civil Servants, as amended by Government's Regulation No. 63 Year 2009 on the Amendment to Government's Regulation No. 9 of 2003 on the Authority of Appointment, Transfer, and Dismissal of Civil Servants.

In appointing the head of Regional officials, the Head of Region raised and / or induct the head of regional officials based on the results of selection (Article 235 paragraph (1) of the head of regional administration. Selection under Article 234 paragraph (4) is "The process of appointment of the head of the regional official positions for the administration performed through the selection of appropriate selection process for a leading position in high supreme Regional agencies as stipulated in the law concerning State Civil Apparatus.
Promotions in the Law of SCA, is provided by Article 72, that the authority is vested in the Head of Region in the promotion of civil servants in paragraph (3), which reads: "Promotion of Administration officials and Functional Officer of SCAis carried out by officials of Supervising Apparatus after being considered by performance assessment team of civil servants further in government's institutions. Further regulation concerning career development, competence development, career patterns, promotion and transfer is mandated by Article 74 of the Law of SCAthat has issued Regulation of the Minister of Administrative Reform and Bureaucratic Reform No. 13 Year 2014 on Procedures for Filling high Leadership positions which is transparent in the Environmental Government Agencies.

4.4. Limitation of Authorityon Political Positions andBureaucratic Positionsin Local Government

In the country following the democratic system the presence of political parties in the government bureaucracy is inevitable. According to liberal theory, it runs the government bureaucracy of government policies that have direct access to the people with credentials, obtained in the elections. Thus the government bureaucracy was not only dominated by bureaucratic officials who solely pursue pathfor career, but there are also political officials. Vice versa, the government bureaucracy is not only occupied by political leaders of the political parties but also the leader of a professional career of bureaucracy officials.[1]
When there is a political officials in the government bureaucracy, then that needs to be asked is what the relationship between the two is. The presence of political parties will certainly bring influence or a very big effect on bureaucracy in the government, especially since the reform with the growth of political parties, resulting in bureaucratic institutions of government that brought mixed affairs against the interests of political parties which led the bureaucracy in local government. Because politics in a democratic government realization is carried out by political parties, their aspirations may vary, depending on the difference in their respective political parties. The position of the leader of the authorities makes policy to be central role. There are leaders who lead human resources, leader that controls the budget, facilities, and other equipment,even further to leader who determines the direction of the organization he leads. Thus, it is difficult to avoid the bureaucracy of state administration to be a neutral bureaucracy.[2]

5. Closing

5.1. Conclusion

The fundamental of The Head of Regional Government'sauthority in set appointment, transfer, and dismissal of civil servants apparatus of the state in the administration of local governments, based on research on the Local Government Act is not regulated/stipulated yet. This is as in the provisions of Article 211 of the Law on Local Government and also affirmed in Article 235 of Local Government Act. The fundamental of authority can be exist only when the Head of Regional Government received the delegation, the authority from the President, under Article 53 e of the State Civil Law Reform. Associated with the theory of delegation of authority, there must be a confirmation that there is a delegation of authority to

[1]Miftah Thoha, Birokrasi dan Politik di Indonesia, Op Cit, page v
[2]Miftah Thoha, Birokrasi dan Partai Politik, Kompas 15 April 2016

other government's organs. If there is no delegation, there is no authority that can be interpreted as the basis to law and regulation. So if this is done, clearly The Head of Region had committed violation to the existing laws, and getting sanction from its superiors in accordance with laws and regulations. Associated with the theory of Human Rights, as a result of the measures performed by the Head of Region in set appointment, transfer, and dismissal of employees of the State Civil Apparatus has violated and depriving the rights of others. Associated with the teaching of philosophy of law,there is a nuanced values of justice, truth, legal certainty and the like, it is clear that the Head of Region is not in line with the existing values.

5.2. Suggestion

The authority of the Head of Regional Government in the management of State Civil Apparatus, especially on the appointment, transfer, and dismissal of employees of State Civil Apparatus, should be strictly regulated as the authority of the Central Government. It actually refers to the functions of State Civil Administrative employees as one means of adhesive and unifying the nation and the importance of the position of the State Civil Apparatus as government administration and public services. In addition, this arrangement also aims to firmness to avoid or minimize contamination of political interest by political officials in the region.

Meanwhile, in the framework of regional autonomy, there is an authority of Central Government to be delegated, then the rules must be made devolution as a delegation from Central Government to local governments in accordance with the legislation. Synchronization and harmonization of legislation governing the management of SCA Personnel should be done carefully to avoid conflicts of norms both horizontally and vertically.

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