

General Review Of The Appointment Of Active Polri Members To Answer As Regional Head (CASE STUDY: Appointment OF Pol Commissioner General Mochamad Iriawan AS Acting Governor OF West Java.)

Panhar Makawi¹

Universitas Esa Unggul, Jakarta
panhar.makawi@esaunggul.ac.id

Muhammad Rizky pranata²

Universitas Esa Unggul, Jakarta
muhammad.risky@esaunggul.ac.id

Muhammad Abudan³

Universitas Esa Unggul, Jakarta
muhammad.abudan@esaunggul.ac.id

Suharno Pawirosumarto⁴

Widyatama University

Abstract

This research analyzes the appointment of Pol Commissioner General (Komjen) Pol Mochamad Iriawan as Acting Governor of West Java. Because according to Law No. 2 of 2002 concerning National Police of the Republic of Indonesia, it is stated in Article 28 that members of the police must not involve themselves in practical political activities and if they are going to occupy positions outside the National Police, they must resign. Pol Commissioner General (Komjen) Mochamad Iriawan is still a unit within the Indonesian National Police and where his appointment as Acting Governor of West Java is a proposal of the Ministry of Internal Affairs (Mendagri) which then Commissioner General (Komjen) Pol M Iriawan is appointed as the Acting Governor of West Java in dated 18-06-2018 which was then handled by the president according to the Presidential Decree Number 106 / P of 2018 concerning the Inauguration of the Dismissal of the Governor / Deputy Governor of West Java for the 2013-2018 Term and the Appointment of the Acting Governor of West Java. This study uses normative, the author will analyze in the appointment of an active police officer who became Acting Governor of West Java. The results of this study concluded that the appointment of the Minister of Home Affairs made Komjen M Iriawan as Acting Governor of West Java in violation of Law No. 2 of 2002 concerning the Indonesian National Police and Law No. 5 of 2014 concerning State Civil Apparatus. In this Law, all procedures are regulated if a police officer wants to occupy a position within the State Civil Apparatus.

Keywords

Police, State Civil Apparatus, State Administration Law

To cite this article: Makawi, P, pranata· M, R, Abudan· M, and Pawirosumarto, S. (2021) General Review Of The Appointment Of Active Polri Members To Answer As Regional Head (CASE STUDY: Appointment OF Pol Commissioner General Mochamad Iriawan AS Acting Governor OF West Java.). *Review of International Geographical Education (RIGEO)*, 11(6), 1439-1450. doi: 10.48047/rigeo.11.06.158

Submitted: 10-10-2020 • **Revised:** 14-12-2020 • **Accepted:** 18-02-2022

Introduction

Background

Indonesia is governed and regulated according to the law. The law ensures the justice prevailed. The people viewed that law is a tool to prevail justice. Hence, the nature of law is to bring fair rules in society. The law must establish fair rules about people's lives, as aspired. The law contains a demand for justice. It is expected that all provisions governing all human behavior or conditions in life reflect a sense of justice. (Budiardjo, 2007, Saudi, 2018) The National Police of the Republic of Indonesia (Polri) is said to be a state instrument that plays a role in maintaining security and public order, enforcing the law and law as well as providing protection, protection and services to the public in the context of maintaining domestic security. (Law No. 2 of 2002, concerning the Indonesian National Police, Article 5 paragraph (1) The Indonesian National Police is known today as the Police Department which was formed on August 19, 1945. The National Police tries to use the federal police system to oversee the Ministry of Home Affairs with compartmentalized powers between provinces and even between residencies. Then starting on July 1, 1946, the National Police adopted the Indonesian National Police system. This police system is felt to be very fitting with Indonesia as a unitary state, therefore within a short time the National Police can form its commanders to the sector level (sub-district). And this system has been used by the National Police until now. The duties of the police in Law Number 1 of 1961 concerning Basic Provisions for the Police of the Republic of Indonesia:

1. The National Police of the Republic of Indonesia, hereinafter referred to as the National Police, is a state law enforcement tool which is primarily tasked with maintaining internal security.
2. The National Police in carrying out their duties always uphold the basic human rights and state law.

Of the various laws and regulations governing the duties of the Republic of Indonesia Police, it is clear that the tasks of the Republic of Indonesia Police are very broad which includes all agencies ranging from the Department of Defense to Security to the small community all needing the police as safety and public order. To carry out their duties and foster security and public order, the Police of the Republic of Indonesia is obliged to do all work and activities to foster public security and order.

The police as a community protector that provides protection and services to the community for the enforcement of the provisions of the legislation, is inseparable from a binding rule for carrying out an action in carrying out their duties as outlined in Law Number 13 of 1961 in Chapter III, that obligations and the authority of the police in carrying out their duties must be willing to be placed anywhere in the Territory of the Republic of Indonesia. (Soehino, 2005)

A republic-shaped state has a system of government that can never be separated from the supervision of its people. Is democracy, a form of government that is formed because of the will of the people and aims to meet the interests of the people themselves. Democracy is a process, meaning that a republic will not stop in one form of government as long as the people of that country have a changing will.

Surprisingly, the Government through the Minister of the Interior (Mendagri) issued a discourse to make the police as the executor of the task or acting as Governor to fill the vacancy, both due to detainees who were on leave following the elections and because the term of office of the regional head before the election took place. In fact, the mandate of the reforms firmly stated among others to abolish ABRI's dual function. The meaning is not only to ensure the neutrality of the TNI as the holder of the constitutional power that maintains national defense, but also the neutrality of the National Police who is responsible for national security.

But according to Law no 2/2002 on the Indonesian National Police, article 23 on oaths for police officers in carrying out their duties must be neutral. Article 28 states that police officers must not involve themselves in practical political activities and if they are going to occupy a position outside the National Police must resign. In the above explanation, the author is interested in analyzing the relevant rules related to the Law of the Unitary State of the Republic of Indonesia, the Law on State Civil Apparatus, and the Local Election Law in which cases such as High Officers from the National Police Institution who fill as officials of the Governor of West Java and the Governor of North Sumatra. The two regions are the two regional election organizers and even include the pilkada-prone zones. Espirit de corp or the loyalty of members to the leadership and institutions can affect the neutrality of the Police. In this case, neutrality in the task of securing

elections in the regional elections with the Governor's Governor a Polri starch becomes a question.

Formulation of the problem

1. Is the appointment of active high-ranking police officers in accordance with the Police Law, the Law on State Civil Apparatus, and the Local Election Law?
2. What is the legal effect on the decision or stipulation issued by the Regional Head Act?

Review of Theory and Previous Researchers

Republic of Indonesia National Police

The police is an organization that has a very broad function. The police and the police were already well-known in the 6th century as state apparatuses with their authority reflecting a wide range of powers being the guardians of tyrannism, thus having the symbolic image of a tyrannical ruler. In such a way the image of the police and the police at that time then the country concerned was called the "police state" and in the history of the state administration was once known a "Politeia" state. During the heyday of expansionism and imperialism in which the power of the government borrowed the hands of the police and the police to carry out the iron fist duties to oppress the indigenous people for the sake of extortion of manpower, this situation created a bad image for the police themselves. (Warsito, 2005)

Thus it can be concluded that talking to the police means speaking about the functions and institutions of the police. speaking of the police we can discuss the existence of the police of the Republic of Indonesia which is the Indonesian police agency. On the other hand, the function of the police that develops one of the "government functions" implies that the government is held by the president as the holder of government power. This is affirmed in article 2 of the National Police Law, which states that the function of the police is one of the functions of the government in the field of maintaining security and public order, law enforcement, protection, protection, and service to the community.

The National Police of the Republic of Indonesia or often in short with the National Police in relation to the government is one of the functions of the government in the field of maintaining security and public order, law enforcement, protection, protection, and service to the community. Aiming to realize domestic security which includes maintaining the security and public order, orderly and upholding the law, implementation of protection, protection and public services, as well as the creation of public peace by upholding human rights, this is contained in Article 4 of Law Number 2 2002 concerning the Indonesian National Police.

In accordance with the Big Indonesian Dictionary (KBBI), the meaning of the word police is: a body that is in charge of maintaining security, peace and public order (catching people who break the law), is a member of a government agency (a state employee in charge of maintaining security and order) .The identity of the police as a legal servant should be like that, the police who provide service, protection, enlighten society and strive to equalize and maintain independence and create a just and prosperous society with a tri-brata spirit and a great spirit, a police who has a clear conscience, behaves calm, steady and unshakeable in any situation and condition and always right in making decisions.

The police as government officials, the organization is within the scope of the Government. In other words the Police organization is part of the Government Organization. In terms of language, a police organ is a tool or body that carries out police duties. So that these tools can be coordinated, and achieve the desired goals, then given the division of work and accommodated in a container that is usually called the organization. Thus, its existence, growth and development, its shape and structure are determined by the vision of the Government concerned for the implementation of its Police duties. Around the world the Police Organization is different. There are those who are in charge of the Ministry of Home Affairs, there are those who are under the Ministry of Justice, there are those who are under the control of the Prime Minister, the Vice President, is controlled by the President himself

The relation with the state's life as the National Police is a state instrument that plays a role in maintaining public order and security, upholding the law, as well as providing protection, protection, and service to the community in the context of maintaining domestic security. In order to carry out its functions and roles throughout the territory of Indonesia or which is considered to

be the territory of the Republic of Indonesia, it is divided into jurisdictions according to the interests of carrying out the duties of the Indonesian National Police, as determined in government regulations. (Budi, 2014) The police territory is divided in stages, starting at the central level which can be called the National Police Headquarters, whose working area covers the entire territory of the Republic of Indonesia which is led by a National Police chief responsible to the President. Then the provincial level is called the regional police, commonly called the Regional Police, led by a Regional Police Chief, who is responsible for the National Police Chief. At the district level it is called Resot Police or also called the Polres which is led by a Police Chief who is responsible for the Regional Police Chief. At the sub-district level there is a police force which is commonly referred to as the Sector Police or Sektor Police, which is led by a police chief who is responsible for the police chief.

The function of the police as regulated in Article 2 of Law Number 2 of 2002, namely as one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, protection and services to the public While the main task of the police is regulated in Article 13 is to maintain security and public order; enforce the law; and provide protection, protection and service to the community. Then the elaboration of the main tasks of the police is contained in article 14 of Law Number 2 of 2002, namely:

1. Implementing arrangements, guarding, escorting and patrolling community and government activities as needed.
2. Hold all activities in ensuring the safety, order and smooth traffic on the road.
3. Fostering the community to increase community participation, legal awareness and legislation.
4. Participate in the development of national law.
5. Maintaining order and ensuring public security.
6. Conduct coordination, supervision and technical guidance for special police, civil servant investigators and other forms of self-help security.
7. Conduct an investigation and investigation of all criminal acts in accordance with the criminal procedure code and other statutory regulations.
8. Carry out police identification, police medicine, forensic laboratories, and psychological psychology for the purpose of police duties.
9. Protect the safety of the body and soul of public property, and the environment from disruption of order and / or disaster, including providing assistance and assistance with respect for human rights
10. Serve the interests of the community for a while before being served by the agency and or the authorities.
11. Providing services to the community in accordance with the interests in the scope of police duties, as well
12. Carry out other tasks in accordance with statutory regulations.

The authority of the police as regulated in Article 15 paragraph (1) of Law Number 2 of 2002 is as follows:

1. Receive reports and / or complaints;
2. Help resolve community disputes that can disrupt public order;
3. Preventing and overcoming the growth of community diseases;
4. Oversee the flow that can cause division or threaten national unity;
5. Issue police regulations within the scope of administrative authority of the police;
6. Carry out special inspections as part of police actions in the framework of prevention;
7. Take the first action at the scene;
8. Taking fingerprints and other identities and photographing someone;
9. Look for information and evidence;
10. Organizing a national criminal information center;
11. Issue permits and / or certificates needed in the context of community service;
12. Providing security assistance in the hearing and implementation of court decisions, activities of other agencies, and community activities;
13. Receive and store findings for a while.

Discretion is a power or authority that is carried out based on law on consideration and conviction and emphasizes more on moral considerations than on legal considerations. (M.Fall, 1991)

Discretion involves making decisions that are not very bound by law, in which personal judgment

also plays a role. Police discretion is an authority regarding the decision making in certain conditions based on personal considerations and beliefs of a police officer. (F. Anton, 2004) Discretionary power possessed by the police shows that the police have great power because the police can make decisions where the decision can be outside the provisions of the law, but it is justified or allowed by law. This is as stated by Samuel Walker that one thing that can explain the power of the police or other agencies in carrying out their duties, namely the existence of discretion or authority given by law to act in special situations in accordance with the judgment and conscience of the agency or officers themselves.

According to HR Abdussalam, actions taken by the police are based on considerations based on moral principles and institutional principles, as follows: (Abdussalam, 2009)

- a. Moral principle, that a moral conception will give concessions to someone, even if he has committed a crime.
- b. The institutional principle, that the institutional objectives of the police will be more secure if the law is not carried out rigidly so as to cause a sense of dislike among ordinary citizens who obey the law.

According to Satjipto Raharjo, acts of discretion by the police were limited by: (Raharjo, 1991)

- a. The principle of necessity, that the action must be really needed.
- b. The actions taken are really in the interests of the police.
- c. The principle of purpose, that the most appropriate action to eliminate a disturbance or not the occurrence of concern for greater consequences.
- d. The principle of balance, that in taking action must be taken into account the balance between the nature of the action or target used with the size of the disturbance or the severity of an object that must be acted upon.

According to M. Faal, the policy steps taken by the police. Usually with the following considerations: (M. Fal, 1991)

- a. The use of local customary law is felt to be more effective than the positive law in force.
- b. Local law can be felt more by the parties between the perpetrators, victims and the community.
- c. The wisdom pursued has more benefits than merely using existing positive laws.
- d. Of their own will.
- e. Not contrary to public interest.

State Civil Apparatus

State Civil Apparatus, hereinafter abbreviated as ASN, is a profession for Civil Servants and Government employees with work agreements that work for Government agencies. State Civil Servants, hereinafter referred to as ASN Employees, are civil servants and government employees with work agreements appointed by civil servant development officers and assigned duties in a government position or assigned to other state duties and paid according to statutory regulations. (Law No. 5 of 2014, concerning the State civil apparatus, article 1 paragraph 2)

Understanding Civil Servants logemann by using material criteria examine the relationship between Civil Servants by giving an understanding of Civil Servants every official who has official relations with the State. Civil Servants, according to the Indonesian General Dictionary, "" Employees "means" people who work for the government (companies and so on) while "" Civil "means the state or government. So a Civil Servant is a person who works for the government or the state. (Poerwadarminta, 1986)

ASN employees function as:

1. Implementing public policy.
2. Public servant; and
3. Adhesives and unifying the nation.

ASN employees on duty:

1. Implement public policies made by the Employee Supervisory Officer in accordance with the provisions of the legislation
2. Providing professional and quality public services; and
3. Strengthen the unity and integrity of the Unitary State of the Republic of Indonesia.

Position of the State Civil Apparatus

- 1) ASN employees are located as elements of the state civil apparatus
- 2) ASN employees implement policies set by government agencies
- 3) ASN employees must be free from the influence and intervention of all parties and political parties

Civil Apparatus Rights The basis of the existence of rights is that humans have a variety of needs which are an incentive for themselves to meet their needs, such as working to earn money for fulfillment. Humans in economic studies are referred to as resources because they have intelligence, through increasing intelligence resulting in humans being said to be homo sapiens, homo politicians, and homo economics and in deeper studies it can also be said that humans are zoon politicon. Based on the development of the modern world, in the process each individual will interact in an increasingly widespread society and the next development is the start of the concept of organization which encompasses the field of government, so that humans can be said to be homo administrators and organization man. (Sondang P, 1996) ASN employees play a role as planners, implementers, and supervisors in carrying out public administration and national development tasks through the implementation of professional public policies and services, free from political intervention, and free from corrupt practices, collusion and nepotism.

Public Servants are elements of the state apparatus, state servants and public servants who are full of loyalty and obedience to Pancasila, the 1945 Constitution, the State and the Government carries out governmental and developmental duties. Civil Servants as state apparatus tasked with assisting the President as Head of Government in organizing government, the task of implementing statutory regulations, in the sense of the word obliged to make every law and regulation obeyed by every community. In carrying out the laws and regulations in general, the Civil Servants are given official duties to carry out these tasks as well as possible. As a public servant and public servant every Civil Servant must be able to put the interests of the interests of the State and the interests of the community above personal and group interests. As a servant of the State a Civil Servant must also be loyal and obedient to the Pancasila as the philosophy and ideology of the State, to the 1945 Constitution, the State and the government. In this case, Civil Servants must be monoloyalty, so that every Civil Servant can focus all attention and thoughts and give up his power and energy to carry out government and development tasks as well as empowering and efficient. Fidelity and full obedience, which means that Civil Servants are fully under the leadership of the government and as a public servant.

Discretionary power is a specific type of government power and makes sense not only in power, but also in juridical and philosophical terms. From an analytical perspective, the expansion of the government's function in responding to the increasingly broad demands of society against the government is the basis for the birth of the concept of discretionary power as government freedom. Meanwhile, from a juridical perspective, the power of discretion is a necessity because of inadequate legislative schemes from legislators to be implemented by the government or in other words the existence of fuzzy rules and gaps. As a form of juridical power, the government as the maker of the discretionary act has immunity over the act. As for from the perspective, discretionary power is purposive power, not blind power. The axiological asepk of the power of discretion is the pursuit of the most fundamental life purpose of the state, namely public good. The fundamental understanding of the state, namely the principle of legality is a means in the framework of public good. Therefore, in public good can not be ruled out by the principle of legality (goals must not be ruled out by means). The theoretical basis of discretion is a consideration of the development of situations and conditions. Changing situations and conditions is a necessity. While changes to regulations are not necessarily possible. In this context Fatovic gives the rule: "Designed for the ordinary and the normal, law cannot always provide for such extraordinary occurrences in the spite of its aspiration to comprehensiveness" (Clement Fatovic, 2009)

The central government guarantees protection to regional heads who carry out discretion to accelerate development and community welfare. The Ministry of Home Affairs explained that there is currently Law Number 23 of 2014 concerning Regional Government, and Law Number 30 of 2014 concerning Government Administration, which guarantees discretion by regional heads. In principle, Law Number 23 of 2014 and Law Number 30 of 2014 serve as guidelines for regional heads to innovate and do discretion without hesitation and fear.

a. The Government Administration Act guarantees discretion made by regional heads, and ensures the authority to take policies when needed, to accelerate development and welfare of the community. Discretion can also be made if there is no law governing an issue, or the rules are incomplete and unclear, causing stagnation. It is hoped that regional heads will not hesitate and

be afraid to innovate, and optimize their potential, even President Joko Widodo has given special instructions related to discretion to the National Police and the Attorney General's Office. In essence, discretion and government administrative actions cannot be criminalized.

b. Local Government is a very strategic institution in state management. The course of state life will be determined effectively by whether or not government management.

Regional Head Election

Election of Regional Head and Deputy Regional Head, or often called Pilkada or Pemilukada, is part of the implementation of democracy. Regional Head is a political office whose job is to lead and move the speed of government. Public office terminology means that the regional head carries out the function of making decisions directly with the interests of the people or the public, impacting the people and being felt. Therefore the Regional Head must be chosen by the people and must be held accountable. While the meaning of political office is that the mechanism of recruitment of regional heads is done politically, namely through elections involving political elements, namely by selecting the people against the nominees as regional heads. In political life in the area, pilkada is an activity whose value is parallel to the legislative elections, it is proven that the regional head and the DPRD become partners. (Agus Hadiawan, 2009)

The 1945 Constitution is a set of regulations that determine the powers and responsibilities of various state instruments, the 1945 Constitution also determines the boundaries of the various centers of power and describes the relationships between them. (Miriam Budiardjo, 2013)

Material that is regulated in laws and regulations which are under the 1945 Constitution is not permitted to conflict with the material of the 1945 Constitution. Materials regarding the administration of government, elections and about organizing general elections contained in the 1945 Constitution must be retranslated in Law (UU), Government Regulation (PP), Government Regulation in Lieu of Law (Perpu), and so on. Articles contained in the 1945 Constitution must be used as the main reference in the making of Laws (Laws), Government Regulations (PP), Government Regulations in lieu of Laws (Perpu) and so on and which become the Legal Basis for Election of Regional Heads are :

- a. 1945 Constitution.
- b. Law Number 23 of 2014 concerning Regional Government.
- c. Law No. 10 of 2016 concerning the second amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law.
- d. Republic of Indonesia Election Commission Regulation Number 4 of 2016 concerning Amendments to Election Commission Regulation Number 3 Regarding Stages, Programs and Schedule for the Election of Governors and Deputy Governors, Regents and Deputy Regents and / or Mayors and Deputy Mayors of 2017.
- e. Republic of Indonesia Election Commission Regulation Number 5 Year 2016 Regarding the second Amendment to Election Commission Regulation Number 9 Year 2015 Regarding the Nomination of the Election of the Governor and Deputy Governor, the Regent and Deputy Regent, and / or the Mayor and Deputy Mayor.

In most democracies, elections are considered a symbol, as well as a benchmark, of democracy. The results of general elections held in an atmosphere of openness with freedom of opinion and freedom of association are considered to reflect rather accurately the participation and aspirations of the people. Even so, it was realized that the general election was not the only benchmark and needed to be supplemented by the measurement of several other activities that were more sustainable, such as participation in party activities, lobbying, and so on. The choice of the type of direct election system always considers aspects of "legitimacy" and "efficiency", which are always a "trade off". That is, choosing a system with high legitimacy always has very inefficient consequences. Otherwise,

The regional head election system has a significant influence on the character and character of the competition of regional head candidates. What is meant by the character and character of competition is that the salient features and tendencies of competition in the elections can also be designed to facilitate certain political behavior because the electoral system can be easily manipulated.

Research methods

This research will be prepared using the type of normative juridical research, which is research focused on examining the application of the rules or norms in positive law. Normative juridical, that is the approach that uses the positivist legis conception. This concept views the law as identical with written norms created and promulgated by authorized institutions or officials. This conception views the law as a normative system that is independent, closed and independent of real community life. (Johnny Ibrahim, 2006) This study uses a statutory approach (statute approach) and a case approach (case approach). The legislative approach is used to find out the entire legal regulations, especially criminal law in Indonesia. The case approach aims to study the application of legal norms or rules that are carried out in legal practice. Especially regarding cases that have been decided as can be seen in the jurisprudence of cases which are the focus of research, namely criminal cases.

Results and Discussion

Discussion

Home Affairs Minister Tjahjo Kumolo still appoints Commissioner General M. Iriawan as Acting Governor of West Java, Monday (6/18/2018). Even though Iriawan's name was made public in January, many people criticized him. Regarding this matter, the Head of the Ministry of Interior's Information Center Bahtiar stated that the inauguration was in accordance with the rules. If last January there was a controversy that could be understood considering that he was still in a structural position at the National Police Headquarters as the Operations Assistant of the National Police Chief. But since the beginning of March 2018, Iriawan has held a civilian position, namely as the Main Secretary of Lemhanas. The status of Komjen Iriawan was the same as Inspector General Carlo Brix Tewu when he was Acting Governor of West Sulawesi, 30 December 2016 - 12 May 2017. At that time, Carlo Tewu was serving in the Coordinating Ministry for Politics, Law and Security. The Ministry of Home Affairs also refers to Law Number 10 of 2016 concerning Pilkada. Article 201 of the Act states "In filling the vacancy of the position of Governor the Acting Governor is appointed who comes from a high-level senior leadership position until the inauguration of the Governor in accordance with applicable laws and regulations,"

The Ministry of Home Affairs also explains Article 19 paragraph (1) letter b of Law No. 5 of 2014 concerning State Civil Apparatus which regulates the scope of nomenclature of high-level senior management positions. The article states "what is meant by high-level leadership is the ministry secretary, main secretary, secretary general of state institutions, secretary general of non-structural institutions, director general, deputy general inspector, chief inspector, chief inspector, head of agency, chief ministerial staff, chief secretariat president, the head of the vice president's secretariat, the president's military secretary, the head of the presidential advisory council's secretariat, the provincial regional secretary, and other equivalent offices. "The reason for the appointment of the Acting Governor is Regulation of the Minister of Home Affairs Number 1 of 2018 concerning Leave Outside the Dependency of the State for the Governor, Deputy Governor, Regent, Vice Mayor, Mayor and Mayor and Article 4 paragraph (2) of the Minister of Home Affairs stipulating that the Acting Governor is from a high-level official or level of authority central or provincial government.

Is the appointment of active high-ranking police officers in accordance with the Police Law, the Law on State Civil Apparatus, and the Local Election Law?

The law already explains about the space for members of the police to occupy the position of the State Civil Apparatus, however Law No. 5 of 2014 concerning State Civil Apparatus limits which positions may be filled by members of the national police. In article 20 Paragraphs (2) and (3) of the Law on the State Civil Apparatus it is regulated that members of the Indonesian National Police are only allowed to fill certain State Civil Service positions, namely in positions held by central government agencies and not included in positions in Regional institutions. Central agencies are like:

1. Ministry of,

2. Non-Ministry Institutions,
3. Secretariat of State institutions, and
4. Secretariat of non-structural institutions.

However, this placement also cannot be done at will of the Ministry of Home Affairs (Ministry of Home Affairs) because there must be principles of propriety that must also be considered. The principle of propriety is set forth in article 1339 of the Civil Code which states, "Agreement is not only binding on what is explicitly stipulated therein, but also everything according to the nature of the agreement is demanded based on justice, habits, or the law" This principle is a measure of relationship which is also determined by the sense of justice of the community. According to Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia in Article 28 states as follows:

- A. The Republic of Indonesia National Police is neutral in political life and does not involve themselves in practical political activities.
- B. Members of the Indonesian National Police do not exercise their right to vote and be elected.
- C. Members of the Indonesian National Police can occupy positions outside the police force after resigning or retiring from police services.

Therefore, Members of the Indonesian National Police if they want to occupy a position outside the police must have the status of resignation or retirement from the police service according to Law No. 2 of 2002 concerning the Indonesian National Police Article 28 paragraph (c).

There are reasons for the Minister of Home Affairs to elect Police Commissioner General M, Iriawan as Acting Governor of West Java, namely:

1. The limited number of officials in the Ministry of Home Affairs fills the vacant position of Governor in 17 provinces which will hold the 2018 elections.
2. The filling of the Governor's position has also been carried out by the Ministry of Home Affairs by appointing senior police officers Inspector General Carlo Brix Tewu who served as Acting Governor of West Sulawesi to replace Ismail Zainuddin in 2016.
3. The Minister of Religion's reluctance to appoint the regional secretary to the Acting Governor because it would be expected to move civil servants to participate in the elections simultaneously / in favor of one of the prospective participants.
4. The Ministry of Home Affairs argues that the appointment of the Acting Governor is his authority in accordance with article 4 paragraph (2) "Acting governors as referred to in paragraph (1) shall come from high-level senior management officials / equivalent in the scope of the central government or provincial regional government. and Article 5 paragraph (1) "Acting governors as referred to in Article 4 paragraph (2) are appointed by the minister."

Besides that the Minister of Home Affairs built the perception that the placement of the police force was due to the level of vulnerability and maintaining the stability of governance, so it could be interpreted that the Province of West Java was considered as a vulnerable area in the 2018 elections.

The first legal basis Kemendragi to elect Komjen M Iriawan as the Acting Governor of West Java, based on Law Number 10 Year 2016 Regarding Election namely article 201 Paragraph (10) which reads:

"To fill the Governor's vacancy, the Acting Governor was appointed from a High-Level Official Officer until the inauguration of the governor is completed with statutory provisions."

However, Nomenclature of high-level leadership positions does not include the TNI or POLRI because the scope is regulated in the explanation of Article 19 Paragraph (1) Letter b of Law Number 5 of 2014 concerning State Civil Apparatus, namely:

"Middle senior leadership positions include the ministry's secretary general, ministry secretaries, main secretaries, secretaries general secretary of state institutions, secretary general of nonstructural institutions, director general, deputy, inspector general, chief inspector, chief inspector, chief executive officer, chief executive secretary, head of secretariat Vice-Presidential Secretariat, Presidential Military Secretary, Head of the Presidential Advisory Council Secretariat, provincial regional secretary, and other equivalent offices. "With this provision, it is actually clear that if the Minister of Home Affairs (Mendagri) appoints other than the position above, it means that it is incompatible and has the potential to violate the election law itself. The second legal

basis used by the Minister of Home Affairs is Minister of Home Affairs Regulation Number 1 Year 2018 Regarding Leave Outside the State Dependents Article 4 paragraph (2) states: "Acting governors are from senior high ranking officials / officials within the scope of the central government or provincial government" However, the stipulation regulates the matter of Provisional Officials (Acting), not Acting Governor (Acting). Acting is needed in the condition that the governor is on leave that is not related to the elections, while Acting is needed because the governor's tenure is up.

What is the legal effect on the decision or stipulation issued by the Regional Head Act?

The appointment of Commissioner General (Komjen) of Pol M Iriawan as Acting Governor of West Java raises suspicion towards some parties, because there are a number of political agendas to be held in West Java starting from the Pilkada to the preparation of the 2019 Presidential Election because there are fears of being suspected by appointing a Commissioner General (Komjen) Pol M Iriawan will benefit one of the pairs in the West Java Governor Election (Pilgub) However, the appointment of Polri Commissioner General (Komjen) M Iriawan to act as Acting Governor of West Java The Ministry of Home Affairs (Mendagri) can be judged to be carrying out legal smuggling efforts because the Law on the State Civil Apparatus (ASN) states that the position of high senior leadership is one of the positions in the ASN family itself consists of Civil Servants (PNS) and Government Employees With Work Agreements (PPPK). Basically POLRI or TNI members can occupy high-level leadership positions but based on the provisions of article 204 paragraph (2) Law No. 5 of 2014 concerning State Civil Apparatus states, "High leadership positions can be filled by the TNI / POLRI after resigning from active service if needed and in accordance with the competencies established through an open and competitive process" The decision of the Ministry of Home Affairs (Mendagri) to appoint Pol Commissioner General (Komjen) M Iriawan to serve as the Acting Regional Head of West Java should the House of Representatives issue their questionnaire rights in this case because it is clear that there are 3 Laws violated, the inquiry rules as in contained in Law No. 2 of 2018 concerning MPR, DPR, DPRD, and DPD Article 74 paragraph (3) states "*In the case of disregarding or implementing the DPR's recommendations as referred to in paragraph (1) state officials or Government officials, the DPR may exercise the right of interpellation, the right of inquiry, the right to express opinions, or the right of members of the DPR to ask questions*"

Therefore, the DPR has the right to conduct an investigation of the implementation of a Government policy Act that is related to important, strategic matters and has a wide impact on the life of society, nation and state that is allegedly contrary to laws and regulations. The forms of abuse of office authority that usually occur frequently in bureaucratic arrangements are the dismissal of structural officials which is contrary to statutory regulations, where in the case of dismissal of structural officials according to Government Regulation No. 100/2000 jo Government Regulation No. 13/2002 concerning amendment to PP No. 100 Article 10 of 2000 states that Civil Servants are dismissed from structural positions because:

1. resign from the position he occupies;
2. reach the retirement age limit;
3. dismissed as a Civil Servant;
4. appointed in another structural position or functional position;
5. leave outside the responsibility of the state, except leave outside the responsibility of the state due to childbirth;
6. study assignments for more than 6 (six) months;
7. streamlining government organizations;
8. does not meet physical and spiritual health requirements; or
9. other things specified in the applicable laws and regulations.

The principle of legality is one of the main principles that is used as the basis in every administration, especially in the continental legal system. In democracies, government action must obtain legitimacy from the people formally stated in the law.

So the procedure if there is a candidate as Acting Regional Head must meet the specific standards or work positions that have been set by the Law, Seeing the case of Commissioner General (Komjen) Pol M Iriawan where a member of the National Police is active as Acting Governor of West Java, his status is still in connection with the Republic of Indonesia National Police

Agency of course has been in conflict with Law No. 5 of 2014 concerning State Civil Apparatuses, the question is 'What are the legal consequences of the Beschiking or Decision and the placement of PNS members issued by Decree (SK) through the Commissioner General (Komjen) Pol M Iriawan?' because in his appointment as Acting Regional Head violated 3 Laws at once namely, the State Civil Apparatus, the National Police of the Republic of Indonesia, While civil servants also have the legal rights granted by the constitution, when they know that a crime has occurred, it must immediately report to the Investigator or Investigator, as stipulated in article 108 paragraph (3) of the Criminal Procedure Code (Law No. 8 of 1981). In full Article 108 paragraph (3) of the Criminal Procedure Code reads "Every civil servant in carrying out his duty who knows about the occurrence of events that constitute a criminal offense must immediately report it to the investigator or investigator". Although every civil servant is given legal rights to report the occurrence of a criminal act to the investigator or investigator, but there are no civil servants who use the legal rights. This is due to ignorance of the law,

Conclusion

The appointment of Pol M Commissioner General (Komjen) M Iriawan to serve as Acting Governor of West Java is very contrary to 3 laws namely:

- A. Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia which has explained how the procedures if a police officer wants to occupy outside the police institution itself.
- B. Law No. 5 of 2014 concerning the State Civil Apparatus which has elaborated on how the placement has been determined by members of the POLRI / TNI to fill positions in the central agency not included in regional agencies.
- C. Law No 10 of 2016 concerning Pilkada which explains how the mechanism for filling the vacancy of the Governor's position is that which comes from a high-level leadership position. What are the legal consequences of Beschiking or the Decree and the placement of PNS members issued by Decree (SK) through Commissioner General (Komjen) Pol M Iriawan? because in his appointment as Acting Regional Head violated 3 Laws at once namely, the State Civil Apparatus, the National Police of the Republic of Indonesia, and the Election of Regional Heads of course the decree issued by the Acting Regional Head in the eyes of the Decree SK is legally flawed so it has no power legal and invalid in the eyes of the law.

Suggestion

The Ministry of Home Affairs (Mendagri) in regulating or placing Pol Commissioner General (Komjen) M Iriawan as Acting Governor of West Java, should the Minister of Home Affairs conduct stages of review that refer to Law No. 5 of 2014 concerning State Civil Apparatus which limits permissible positions filled in by members of the police force, bearing in mind that Commissioner General (Komjen) Pol M Iriawan is still a unit of the Republic of Indonesia National Police which should be a member of the police must have resignation status from the police force or be declared retired from the police service according to Law No. 2 of 2002 About the Indonesian National Police.

The Minister of the Interior (Minister of Home Affairs) should consider the impact if the Commissioner General (Komjen) Pol M Iriawan as the Acting Regional Head issues a Decree (SK) because the decree issued by the Acting Regional Head is flawed in the eyes of the law so it has no legal force and does not legal in the eyes of the law, because it is contrary to the applicable law.

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