RECONSTRUCTION THE PATTERNS OF AUTHORITY RELATIONS BETWEEN HEAD OF LOCAL GOVERNMENT AND SECRETARY OF LOCAL GOVERNMENT ON PROMOTION OF CIVIL SERVANTS

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Abstract

The pattern of the authority relation between head of local government and Secretary of local government in the promotion of Civil Servants lead into two pattern which are sub-ordination and co-ordination. Normatively, the position of Secretary is subordinate from Head of local government. Meanwhile, the pattern of coordination is a tiered pattern that puts Secretary as officials who provide recommendations of official candidate to Head of local government as the Trustees of the Local Employment Officer.Both of these relation creates superior position of Head of local government in the terms of promotion of civil servants. To create a proportional authority relation, it necessary pre-requisite form of commitment, orientation of human resources and the use of technology. On that basis, a mechanism must be created to limit the authority of the Head of local government by strengthening the system of merit-based technology.

Keywords: position, authority, promotion of civil servants

Abstrak

Pola hubungan kewenangan antara Kepala Daerah dan Sekretaris Daerah dalam promosi jabatan Pegawai Negeri Sipil (PNS) menimbulkan 2 (dua) pola hubungan yang sub-ordinasi dan koordinasi. Secara normatif, kedudukan Sekretaris Daerah merupakan bawahan (sub-ordinat) dari Kepala Daerah. Adapun pola hubungan koordinasi merupakan pola berjenjang yang menempatkan Sekretaris Daerah sebagai pejabat yang memberikan rekomendasi usulan calon pejabat kepada Kepala Daerah selaku Pejabat Pembina Kepegawaian Daerah (PPKD). Kedua hubungan tersebut menciptakan kedudukan Kepala Daerah superior dari Sekretaris Daerah dalam hal promosi jabatan PNS. Untuk menciptakan hubungan kewenangan yang proporsional, diperlukan pra-syarat berupa komitmen, orientasi pada kualitas SDM aparatur dan penggunaan teknologi. Atas dasar itu, harus diciptakan mekanisme yang dapat membatasi kewenangan dari Kepala Daerah melalui penguatan sistem merit yang berbasis teknologi.

Kata kunci: jabatan, kewenangan, promosi pegawai negeri sipil.

Introduction

Position is an element of governmental implementation which have the function to achieve certain goal in terms of work system of an organization. On that basis, the position give an authorized and able to guarantee the continuity of rights and obligations. To carrying out the activities of government, a civil servants/ administrative agencies actually personifies them self because of the "position" as a source of authority as a state representation. As legal subjects, automatically, the position can take legal actions which have implications on the pattern of inter position relations in governance.

In Indonesia, the authority relations affected by the system of democratic government which creates 2 (two) variety of positions, such as positions of public office and career. Basically, the definition of public office is not set normatively, however, the term of public office can combine with the state officials term as

stipulated in Article 122 of Law No. 5 Year 2014 concerning State Civil Apparatus. To fill this positions, state office can be obtained with 2 (two) ways: *first*, through the appointment by the Head of State (political appointee) or *second*, through the direct election (elected official).[1] Meanwhile career positions is a position in the government environment that can only be occupied by civil servants.

In term of Local Government, which is intended to career officials are officials who have echelon. The highest level of career officials in the local government is the Secretary of Local Government. Based on Law of State Civil Apparatus, the mechanism of setting career officials is based on merit system according to the standards and objective examination of the achievements and abilities.[2] Meanwhile the state authorities are Head of Local Government and Deputy Governor/Regent/Mayor and his Deputy. The existence of Head of Local Government closely related to the implementation of the duty to administer and manage the affairs of local government, including the personnel section.

Normatively, the positions of Head of Local Government is delegated from the President in order to appoint, transfer and dismissal of the civil servants. The Secretary of Local Government is authorized to give official candidate recommendation within Local Government. Based on his role, both of these positions have a strategic function to determine and set a career officials. The implication is political interventions and interest in the promotion of civil servants.

Empirically, this model of delegated authority raises variety of problems when the appoint, transfer and dismissal of the civil servants does not follow the principle of "merit system" but rather on "marriage system". In this condition, the Head of Local Government will utilize all resources to retain political power, including civil servants who are work in his authority.[3] Factors that affecting political bureaucracy are strong persona of Head of Local Government, vested interest of civil servants for career mobility, multiinterpretation of regulations, patron client relations and shadow bureaucracy.[4] Based on the importance of those author-ity, it need reconstruction of relations pattern in Local Government in term of monitoring and limitating the authority, particularly in terms of promotion of civil servants.

Discussion

Construction of the Authority on Promotion of Civil Servants

The authority of civil servants promotion will be associated with the concept of governmental action. Each granting authority to the government officials would be implied responsibility of the officials concerned. [5] It is asserted that the relationship between the position and authority can not be separated from each other, because in every position has the authority to regulate whatever the right given to the position.

In the context of autonomy, the regional authority includes the authority in all areas of government, unless the authorities stipulated in Article 10 paragraph (1) of Law Number 23 of 2014 on Local Government (Local Government Law), namely in the field of foreign policy, defense and security, justice, monetary and national fiscal and religion. In the implementation of Local Government, Head of local government office is authorized either bound or free authority to take decisions to perform public services, including the authority to appoint, transfer and

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1 Eko Prasojo dan Laode Rudita, "Undang-Undang Aparatur Sipil Negera; Membangun Profesionalisme Aparatur Sipil Negara", *Civil Service, Jurnal Kebijakan dan Manajemen PNS*, Vol. 8 No. 1, June 2014, Jakarta:Pusat Pengkajian dan Penelitian Kepegawaian Badan Kepegawaian Negara, page 24.

2 *Ibid*, page 15.

3 Sri Hartini, Setiajeng Kadarsih dan Tedi Sudrajat "Kebijakan Netralitas Politik Pegawai Negeri Sipil dalam Pemilukada (Studi di Jawa Tengah)", *Jurnal Ilmu Hukum Padjadjaran*, Vol.1 No.3, December 2014, Bandung: Faculty of Law Universitas Padjadjaran, page 553.

4 Indaru Setyo Nurprojo, "Merit System Dan Politik Birokrasi di Era Otonomi Daerah", *Civil Service, Jurnal Kebijakan dan Manajemen PNS*, Vol. 8 No.1, June 2014, Jakarta: Pusat Pengkajian dan Penelitian Kepegawaian Badan Kepegawaian Negara, page 50.

5 Winahyu Erwiningsih, "Peranan Hukum Dalam Pertanggungjawaban Perbuatan Pemerintahan", *Jurnal Ilmu Hukum*, Vol. 9, No. 2, 2006, Yogyakarta: Faculty of Law Universitas Islam Indonesia, page 191.

dismissal of civil servants. In discretionary, Head of local government has given the authority as stipulated in Article 1 point 14 of Law of State Civil Apparatus. Meanwhile Secretary of local government is given the authority as regulated in Article 1 paragraph 13 of Law of State Civil Appar-atus.

Based on the authority in the field of personnel, there is a relationship between the Authorized Officer with the Personnel Officer Trustees (PPKD). Associated with the authority for promotion of civil servants, there are 2 (two) approaches which are open selection for High Primary leadership positions (JPT) and the internal selection for office administrators, supervisors and executors. [6] Promotion authority through an open selection described in Article 113. While the position promotion authority internally described in article 72 paragraph (3) of Law of Civil Service Apparatus. Based on the aspects of substance and structure, the positions as Head of local government (PPKD) and Secretary of Local Government (Authorized Officer), there are 2 (two) patterns of relationship, namely: *first*, sub-ordinated relations; and *second*, the relations of coordination.

Sub-ordinated Relation

In the personnel system, the relationship between the government and civil servants based on relationships of public service *(openbare dienstbetrekking)*, in the form of an obligation for the employee to be subject to removal in some kinds of certain positions with the result that the employee did not reject (accept unconditional) appointment in one positions that have been determined by the government, where the government otherwise be entitled to appoint a person of employees in certain positions without the need for adjustment of the will of the concerned[7] Implications of the public relations department is the creation of sub-ordinatie relationships between subordinates and superiors. As according to Buys, a public relations agency with regard to the appointment terms are based on Contrac suigeneris which requires civil servants to be faithful and obedient during a civil servant, even though he may resign at any time. From the opinion of Buys, it can be concluded that as long as they become civil servants, they can not implement their human rights fully.[8]

Based on the concept of public relations department, every civil servant including Secretary of Local Government is obliged to obey the laws that made by the government, includeing the hierarchical relations in the government structure. Based on this pattern, the position of the Head of local government has oversight over the performance of the Secretary of Local Government. In addition, the position of Head of local government as the parties determine the strategic decisions in the context of policy governance. Article 213 Law of Local Government states that in the execution of their duties, the Secretary of Local Government shall be responsible to the Head of local government.

In the legal context, the analogy to the relationship of sub ordination in positions comparable to the relationship between the norms that regulate the formation of other norms that contain elements of "superordination" and "subordination". Hierarchically known as hierarchy, lower level should not backlash with the higher one. On that basis, then the position of supervisor is to supervise and control policies to be issued, including in the case set the profile to fill the vacant position.

Coordination Relation

Coordination is defined as the authority to move, harmonize, and balance the specific or different activities to keep things focused on specific objectives. In essence, coordination are: *first*, logical outcome rather than the principle of the division discharged the task, in which each working unit (unit), only implement part of the main tasks of the organization as a

[6] Tedi Sudrajat, "Eksistensi Kebijakan Pengisian Jabatan Struktural Dalam Kerangka Pengembangan SDM Aparatur Berbasis Merit", *Civil Service, Jurnal Kebijakan dan Manajemen PNS*, Vol. 8 No.1, June 2014, Jakarta:Pusat Pengkajian dan Penelitian Kepegawaian Badan Kepegawaian Negara, page 67.

[7] S.F. Marbun, M. Mahfud MD, 1987, *Pokok-Pokok Hukum Administrasi Negara*, Yogyakarta: Liberty, page 98-99.

[8] *Ibid*, page 99-100.

whole; *second*, arises because of the principle of func-tionalization, in which each working unit only carry out some functions in an organization; *third*, due to the range/level control, which shall foster leadership, guiding, directing and controlling the activities/efforts made by a number of subordinates, under the authority and responsibility; *fourth*, needed in a large and complex organizations, where the various functions and activities to be undertaken by various working units which must be done in an integrated and simultaneous; *fifth*, needed in an organization that was formed based on the principles of track line and staff, due to fundamental weakness in the form of this organization is the problem of coordination; *sixth*, can only succeed with the help of a good means of communication. Therefore, communication administration called the employment relationship plays a very important for the achievement of coordination. As already mentioned above that coordination is the end result rather than employment (communication); and *seventh*, embodiment rather than cooperation, mutual help and appreciate help/live up to the duties, functions and responsibilities of each. This is because each working unit in conducting its activities, depending on assistance from the others working unit. So the mutual dependence or interdependence that encourages the necessary cooperation.[9]

Normatively, coordination relations in terms of appoint, transfer and dismissal of civil servants are described in Article 54 of Law of State Civil Apparatur which stated:

1) The President may delegate authority in State Civil Apparatus Management toward Authorized office in the ministry, the secretary-general/state institution secretariat, nonstructural agency secretariat, province and residence/city secretariat.
2) Authorized Officer referred to paragraph (1) in running State Civil Apparatus functional management in government based on the Merit System and consult with officials of Trustees Personnel in their respective agencies.
3) Authorized Officer referred to paragraph (1), provide recommendations to the official proposal employees coach in institution respectively.
4) Authorized Officer propose the appointment, transfer and dismissal of officials Administration and Functional Officer to the Officer Trustees Personnel in institution respectively.

Based on Article 54 paragraph (2) of Law of State Civil Apparatur contained the phrase "Officials that is authorized as its referred to paragraph (1) in running the function of State Civil Apparatus Management in government agencies based on Merit System and consult to Staff Development Officer". This phrase stated that the relationship between the Head of Local Government and the Secretary of Local Government in terms of a partnership, duties and functions and responsibilities through the principle of the tasks division, functionalization and due to the range or level of control.

Coordination position creates mutual relationship that should be equal in terms of deciding decisions. This position meant that the decision should be based on consideration of both sides, when one party violates the provisions, it is categorized as an abuse of authority, it can be be: *first,* beyond the authority; *second,* mixing authority and/or ***Third***, arbitrary action as set in Article 17 paragraph (2) of Law No. 30 Year 2014 concerning Government Administration.

Observing the legal position between the position of Head of Local Government with Secretary, in one side has the function of coordination and subordination on the other hand, then comes duality of power relations that creates the legal implications on the authority of the Head of Local Government. Empirically, unbalanced position creates dominance Head of Local Government in the system of promotion. Indaru Setyo Nugroho stated that PPKD dominance in the appointment, transfer and dismissal of State Civil Apparatus is a legal issue that is rife in the field. Assessment of PPKD very dominant than the assessment mechanism based

[9] Handayaningrat, 1989,*Manajemen Konflik*, Jakarta: PT. Gramedia Pustaka Utama, page 118-119.

on the author-ity granted to the Position and Rank Advisory Board (Baperjakat).[10]

This condition has created a patronage system where the appointment of civil servants in positions are based on a subjective relationship. Tedi Sudrajat explained that the concept of leadership in Indonesia is still using red tape patrimonial and patriarchal. [11] The implication in the form of: *first*, political relations; and *second*, non-political relationships in the form of nepotism.

In this connection, it appears that the parties supporting the Head of Local Government shall enjoy all the facilities attached to their position or relationship is better known as the *spoil system*. Based on the opinion of James H Svara, empirically the intercations of elected official and administrators have the following characteristics that have been observed: *first*, elected officials and administrators maintain distinct perspective based on their unique values and the difference in their formal positions; *second*, official have partially overlapping functions as elected officials provide political oversight of administration and administrators are involved in policy making; and **Third,** their is interdependency and reciprocal influence between elected officials and administrators.[12]

Through both relationship, there is justification in policy decisions based on the pattern of leadership according to patrimonial culture.This means that the patrimonial bureaucracy as a continuation and heritage of traditional values in the kingdom of the past mixed with the style of the colonial bureaucracy. Elements of local culture or cultural ethics kingdoms and modern culture mixed in a government bureaucracy that grow continuously adding to the Indonesian bureaucracy. The characteristics of bureaucratic patrimonial is: *first,* officials were screened on the basis of personal criteria; *second,* the position is seen as a source of wealth and profit; *third,* the officials control both the function of political and administrative functions; and *fourth,* every action is directed by personal relationships and politics. [13]

The pattern of the relationship between the position of Head of Local Government with Secretary which are subordinate and coordinative affected by the legal provisions which creates more dominant position of superiors to subordinates in determining policy. Determination of the final decision in terms of raising civil servants to fill the vacant position to be a full right of Head of Local Government.

Reconstruction of the Authority on Promotion of Civil Servants

The concept of thinking in employee administration system is influenced by a set of norms in determining the objectives to be achieved. In setting policies and management of employee administration, a set of norms are applied to deter and prevent influences that can change a goal to be achieved. Norms were sourced from philosophy of Pancasila and the Constitution of 1945 which is implemented into legislation.

Law of State Civil Aparratus is a legal product-oriented strategic to build State Civil Apparatus to be more efficient and effective in carrying out common tasks of governance and national development based on the spirit of reform. The reform meant as revamping the public administration system to change the purpose, structure and procedures are intended to facilitate the achievement of development goals. In Menpan-RB Regulation No. PER/15/M. PAN/7/2009 concerning General Guidelines for Bureaucratic Reform, noted that bureaucracy reform is an attempt to reform and funda-

[10] Indaru Setyo Nugroho, *Op.cit*, page 50.

[11] Tedi Sudrajat and Sri Hartini,"A Disicpline Penalty Enforcement Model Toward Neutrality Violation of Government Employees On Regional Election in Central Java", *Jurnal Dinamika Hukum*, Vol. 15 No.3, September 2015, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, Page 251.

[12] James H Svara, "Complexy in Political-Administrative Relations and The Limits of The Dichotomy Concept", *Journal of Administrative Theory&Praxis* Vol 28 No. 1 2006, Milton Park Abingdon, page 133.

[13] Lili Ramli, "Masalah Reformasi Birokrasi", Vol. 11 No. 2, 2008, *Civil Service, Jurnal Kebijakan dan Manajemen PNS,* Jakarta: Pusat Pengkajian dan Penelitian Kepegawaian BKN; See also in Hayat, "Konsep kepemimpinan Dalam Reformasi Birokrasi:Aktualisasi Pemimpin Dalam Pelayanan Publik Menuju Good Governance", *Jurnal Borneo Administrato*, Vol. 10 No. 1, 2014, Samarinda: Lembaga Administrasi Negara, page 72.

mental changes to the system of governance, especially regarding aspects of institutional and human resource management.

In order to realize the reforms, needed improvement, both internally and externally. Riyadi explained that internal factors relating to the behavior of administrative and organizational behavior. As for external factors concerning to the low public trust on bureaucracy.[14] Of the two, there is a causal relationship that the internal reform will have implications for the way external view the point. Systematic attempt to do is to reform the system of internal staffing, so that people understand the changes in the working mechanisms of government to increase confidence in the implementation of the general duty of government.

Especially with regard to internal factors; since the enactment of the law of State Civil Apparatus, the government seeks to reform many of the administrative and organizational behavior at the office at the top level *(top level bureaucrats),* medium level *(middle level bureaucrats),* as well as executive level *(street level bureaucrats).* Empirically, administrative and organizational behavior predominantly influenced by the officials that have position. Position in the context of government will correlate with authority. The authority will legitimize the power that is from the outside is interest to manipulate the organization to align with the target. On that basis, position is being very strategic to achieve organizational goals, preserve power and therefore full of interest. Media to get a position in the government, through the mechanism of promotion as stipulated in the Law of State Civil Apparatus.

To anticipate the problems of the power abuse that can be done by the Head of Local Government, then the things that should be done is to limit the authority of the Head of Local Government as PPKD, so that the objectivity in promotion of civil servants is maintained. The concept of this restriction is to avoid absolute power in order to avoid major damage due to the desire to retain power. This is as Aung San Suu Kyi said that "It is not power that corrupts, but fear. Fear of losing power corrupt those who wield it, and fear of the scourge of power corrupts those who are subject to it."[15]

Efforts in creating a healthy work pattern in government by: *first*, creating commitment of the official to synergize with government policies oriented with the increasing of capacity and capability in the administration of the state; *second*, oriented on quality human resource. "Changing public service, changing public servant?" Thus the last sub-section of Andrew Gray's article as the conclusion of the essays entitled *Government and Administration: Public Service and Public Servants*. He revealed that public services are heavily influenced by *the skill* and commitment of public servants to the service itself. No wonder he opened the paper citing the opinion: *"public services can be a calling and not a career".* [16] *Third*, increase the use of technology in the employment system *(e-gov)*. Technology is an important factor in improving the monitoring and enforcing the law. Use of total technology will force the elite commitment, systems and government officials for change. The presence of technology will broaden the government apparatus to change. Conversely, the use of technology is very dependent on the apparatus and officials in the region, because without the support, commitment and their quality, as advanced technologies that the world will not mean anything.

Based on 3 (three) working patterns, there are a pre-requisite for creating a proportional relationship in the commitment authority, orientation of human resources and the use of technology. When correlated with the cur-rent conditions, the authority to establish the authority of the official candidates for Head of Local Government, but authority must be limited. In this regard, the authority already granted by

[14] Riyadi, "Reformasi Birokrasi dalam Perspektif Perilaku Adminitrasi", 2008, *Jurnal Ilmu Administrasi*, Vol. 5 No. 1, Bandung: STIA LAN, page 101-102.

[15] Aung San Suu Kyi in Arfan Faiz Muhlizi, "Reformulasi Diskresi dalam Penataan Hukum Adinistrasi", *Jurnal Rechtsvinding*, Vol. 1 No. 1, January-April 2012, Jakarta: Badan Pembinaan Hukum Nasional, page 95.

[16] Andrew Gray, *"Government and Administration: Public Service and Public Servants. Parliamentary Affairs"*, Vol. 58 No. 2 2005, Academic Research Library, page 230.

the Law may be restricted in the use of technology based on merit. In this case, the process of assessment, evaluation become structural media, open and objective through the assessment center.[17] A*ssessment center* combines accurate technical objectives valuation with the main characteristics of *assessment center* include: *first*, using a combination of several types of techniques and methods of *assessment; second,* based a specific reference that is multiple criteria; *third*, involvement as a number of assessors in an assessment process, in order to optimize the degree of objectivity and suppresses the votes of bias; *fourth*, the information and the data obtained is integrated so it is composed of a conclusion in the form of recommendations as the result of the assessment center program. Data and information obtained from the results of observations on a number of simulation exercises, psychological tests and interviews; in a form of indications behavior simultaneously integrated in a session between the assessor. Based on the approach to the assessment system, it is necessary to reform the procedure of officials election to minimize the abuse of authority by the PPKD and Authorized Officer without compromising the essence of powers inherent in the office as mandated by legislation.

Conclusion

The relationship between the Head of Local Government and Secretary can be used as the basis for determining the duties and authority as well as to measure of whether the rights and obligations are properly enforced or has occurred action exceeds authority *(detournement de pouvoir),* or there has been a misuse of authority *(misbruik van recht).* Ideally, the requirement to create a balanced relationship pattern is a partner that coordinative, but the Government Law and the Law of State Civil Apparatus put Secretary just as officials who have the authority to recommend the candidate's proposal. The full authority attached to the Head of Local Government. Apart from that, the Secretary is required to account for its duties to the Head of Local Government. This pattern of relationships authority put The Head of Local Government become superior in terms of an official who will be promoted.

Suggestion

First, the pattern of the relationship between the Head of Local Government and Secretary is the result of political compromise revealed in Law of State Civil Apparatus and Local Government Law. For that, we need concrete efforts include; and *second*, changing the content of Law of State Civil Apparatus and Government Law by placing PPKD and Authorized Officer in a balanced position, so that the final determination based on both these positions. The application of the principle of meritocracy-based technology in assessing the performance and evaluation of official candidates to be promoted. Strengthening the standardized system that will reduce the abuse authorized gap by the interested parties.

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[17] The term *assessment center* is used to describe a process, procedure or approach to assess and measure the competence of people. See Dyah Ayu Lestari Windi Astuti, "Penciptaan Sistem Penilaian Kinerja Yang Efektif Dengan Assesment Centre", *Jurnal Manajemen*, Vol. 6 No.1, November 2006, Yogyakarta: Magister Sains FE UGM, page 28.

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