

Regional Head of Performance Accountability in Local Government Law from The New Order to The Reform Era

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ABSTRACT

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The accountability of regional heads is one of the benchmarks for the success of development and regional autonomy. This study aims to analyze the accountability of regional heads in each law. The research method used is a normative juridical method with a statutory approach based on a study of statutory regulations related to this research topic. The results showed that the accountability of regional heads in Law Number 5 of 1974 is not regulated. However, the characteristics of the new post-reform decentralization order by a centralized government were marked by the enactment of Law Number 22 the Year 1999. The DPR elects regional heads based on accountability. In addition, regional heads can be dismissed by the DPR if their accountability report (LPJ) is rejected, which in turn creates political instability. It is also due to the absence of a parallel position between the regional head and the DPRD.

1. INTRODUCTION

Indonesia is a country based on a civil law system, as stated in Article 1 (3) of the 1945 Constitution. Therefore, the wheels of government need to be driven by the law. Besides, the law is described as the foundation of certain significant aspects and a legal tool for social engineering or construction, dispute resolution, and an instrument for governing the behavior of society (social control). Likewise, in the Indonesian context, the law plays an important role based on three functions.¹

The amendment of the Indonesian Constitution 1945 led to changes in the Guidelines of the National Development Plan integrated into the National RPJP. An annual plan is executed to achieve a strategy based on the vision and mission of national development. This concept is guided by "the establishment of a law that is fair and serves the interests of the citizens and nations within the framework of the Unitary State of the Republic of Indonesia. That aims to protect the people and their homeland, promote the

¹ Aziz Syamsuddin, *Proses Dan Teknik Penyusunan Undang-Undang* (Jakarta: Sinar Grafika, 2014); Anna triningsih, "Politik Hukum Pengujian Peraturan Perundang-Undangan Dalam Penyelenggaraan Negara," *Journal Konstitusi* 13, no. 1 (2016): 124–44.

general welfare, create awareness, and establish a world order based on freedom, lasting peace, and social justice related to the Pancasila and the Indonesian Constitution 1945. " This vision is further implemented in the national law following a development mission.²

1. Realizing the legal materials in all fields, including the colonial heritage and national laws related to certainty, justice, and truth, with due regards to legal values that exist in the community,
2. Realizing the legal culture and public awareness of the law,
3. Realizing qualified legal personnel with high integrity, and
4. Realizing a firm, integrated and authoritative legal institution.

After the amendment of Indonesia's posts, the development of national law reform was regarded as an effort to realize good governance. One of its characteristics is the embodiment of a responsible governmental organization. It implies that the government is mandated to provide accountability to the people in implementing its authority. In addition, this creates awareness, and at the same time, the people exercise some form of control over the activities of the government. Therefore, as a sovereign state, the people are responsible for any state assets, including all authorized sources of income.

The government's accountability to the people is also a hallmark of constitutional democracy that limits their power and prohibits them from acting arbitrarily against the citizens. Moreover, without government accountability to its citizens, it is no longer perceived as a democracy. Conversely, a lack of government accountability regarding attitudes, behaviors, and policies tends to occur when the public (the people) is not satisfied with the services. As a result, they no longer believe in the administration. Besides from this protracted case realized through legitimate mechanisms, the extent of power wielded by a government both theoretically and practically is prone to abuses. The facts realized throughout history seemed to justify the postulate raised by an Englishman named historian Lord Acton. The hypothesis stated that "Power tends to corrupt, and absolute power corrupts absolutely" and later became famous. It simply means that whenever people have power over others, they abuse it; this morally destroys their nature and fills them with fierce pride.

In addition, the changes made by the central government are in line with the reformed constitution. It is also led to the amendment of the local government system, including implementing the head performance accountability mechanisms that play a strategic role in regional development. In this context, one of the elements is the Regional Head that is regarded as the administrator or chief executive in local governance with its various authorities. That leads to the potential for either misusing or violating the law. The Indonesian legislation, especially on the accountability of the Regional Head governance, has been established as mandated in Law Number 5 of 1974, Law Number

² Syamsuddin, *Proses Dan Teknik Penyusunan Undang-Undang*.

22 of 1999, and the last Law number 32 of 2004 and Law Number 23, 2014. The responsibility and of the Local Government head is different from the respective laws, the birth of each regime, and legal, the political situation

2. RESEARCH METHODS

This research is based on the process of discovering legal rules or doctrines to resolve related issues encountered. A normative legal method following the statute approach model was adopted. This approach is based on the study of legal regulations related to the problem discussed. A conceptual framework for analyzing the accountability of regional heads is the theory of good governance. According to Philip M. Hadjon, the characteristics of good governance are essentially rooted in two major cornerstones of Constitutional Law, namely (i) the Principle of the State of Law and (ii) the principle of democracy. Philip M. Hadjon's research is highly relevant to the democratic legitimacy element related to the principle of accountable administration. Besides, due to the democratic system, the state needs to consider the interest of the people.³ Conversely, Ganie Rochman stated that the four main elements of the characteristics of "good governance" are accountability (accountability), legal framework (the rule of law), information, and transparency.⁴

3. RESULTS AND DISCUSSION

3.1. Regional Head of Performance Accountability in Law Number 5 of 1974

Law Number 5 of 1974 is the first legal product enacted according to the theme of local governance under the New Order regime due to social-political influence. At the time, the centralization policy was included in the local governance system. That aims to minimize the migration that occurred during the tenure of President Sukarno. In addition, the New Order regime was also responsible for creating national political stability for the implementation of economic development.⁵

Based on conceptual dimensions, Mac Andrew stated that the New Order policies stipulated in Law Number 5 of 1974 were influenced by the initial background of the Local Government that feared a return movement in areas that threaten the unity of the nation. It is evident in the fact that the Local Government was repositioned as the only satellite. Second, the local characteristics of the diverse Indonesian society. Third, the

³ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia* (yogyakarta: Gadjah Mada University Press, 2008); Sri Nur Hari Susanto, "Good Governance Dalam Konteks Hukum Administrasi," *Administrative Law & Governance Journal* 2, no. 2 (2019): 206–207.

⁴ Joko Widodo, *Akuntabilitas Dan Kontrol Birokrasi Pada Era Desentralisasi Dan Otonomi Daerah* (Surabaya: Insan Cendekia, 2001); Putra Astomo, "Good Governance Principles in Running Governance," *Kanun Jurnal Ilmu Hukum* 16, no. 64 (2014): 401–20.

⁵ Wignosoebroto, *Pasang Surut Otonomi Daerah: Sketsa Perjalanan 100 Tahun* (Jakarta: Yayasan Tifa, 2007); Wasisto Raharjo Jati, "Inkonsistensi Paradigma Otonomi Daerah Di Indonesia: Dilema Sentralisasi Atau Desentralisasi," *Jurnal Konstitusi* 9, no. 4 (2012): 744–68.

New Order regime and ideology prioritized economic development, thereby contributing to the reform of local government systems marked by the structures controlled by centralization. UU Number 5 of 1974 was enacted as a result of the economic stability realized in 1970. This policy was further applied to replace Law Number 18 of 1965, which has not been implemented on the pretext of opening a faucet decentralization in the area. Although the spirit of decentralization is not as expected in the end, the central government terminated it. Fourth, the militarization of the bureaucracy was marked following the number included in the executive and legislative structures, which lead to military-style control.

However, based on the characteristics above of the new order regarding the centralized regime, the wheels of government in this aspect, driven by the accountability of the regional heads, were determined by the pattern of relationships among the centralities. This tendency is related to the characters of the local chief accountability, which includes three fundamental considerations, namely

1. Accountability of the regional head's performance in respect to political development and national unity,
2. The accountability of regional heads needs to ensure the harmonious relationship between the central and local governments.
3. The accountability of regional heads needs to ensure the growth of regional development.

Centrality obligation for accountability is stipulated in Article 22 Paragraph (2) of Law Number 5 of 1974, which stated that:

"In exercising the rights, powers, and duties of the local government, the Regional Head reports to the President through the Minister of Interior."

The regional administration stipulated in Law Number 5 of 1974 includes decentralization, deconcentration, and assistant task. In addition, Law Number 5 of 1974 embraces household systems both in reality and responsibly. The real is described as granting autonomy to certain regions based on factors, calculations, measurements, and the appropriate policy. Conversely, concerning being responsible, the granting of autonomy is in line with national development and unity of the nation's political formation.⁶

Irrespective of the fact was that Law Number 5 of 1974 regulates the autonomy of the local government with its principles. However, in practice, there is no decentralization and centralization tendency of power by the central government. This Act does not regulate in detail the accountability of the Regional Head and the Parliament. UU Number 5 of 1974 only offers specific arrangements regarding the Parliament and

⁶ Afnila, *Pemerintah Daerah Dalam Kerangka UU No.5 Tahun 1974 Dan UU No 22 Tahun 1999* (Medan: USU Press, 2005).

inquires about the accountability report. The Regional Head is directly accountable to the President through the Minister of the Interior.⁷

In essence, the accountability or performance of the Regional Head is determined by the pattern of the relationship existent among the centralities. This trend is traced from the character heads to the area and includes three considerations, namely⁸

1. Follow the political guidance and unity of the nation,
2. Ensure a harmonious relationship between the central and local governments based on the integrity of the unitary state,
3. Ensure the growth of regional development

The main principles in this Act emphasize the obligations that led to the autonomous regions, which do not have such rights to propose domestic affairs because it is specified by 12 and 19 affairs at the district or city and the Regional Level 1 (Province). As stipulated in article 11, paragraph 1, regional autonomy is located in the district or city. However, they are entitled to just a little piece of affairs, based on the logic of "national uniform." It is implied that the needs of each region are considered equal.⁹

3.2. Regional Head of Performance Accountability

Law Number 22 of 1999 and Law Number 5 of 1974, following the political complexion of the centralized new order, led to the emergence of several weaknesses, especially amid the demands for democratization in the reform era. That further led to Law Number 22 of 1999 on Regional Government instead of Law Number 5 of 1974. Law Number 22 of 1999 emphasizes democratization, public participation, equity, and justice and considers the potential and diversity of the regions and decentralization. The amendment of Law Number 5 of 1974 to Law Number 22 of 1999 brought about a fundamental change to the Regional Head's accountability and performance. That strictly separates the Parliament's position (Legislature) and the Regional Head (executive).

The separation is followed by the authority to select the head of the Regional Council. However, this had specific implications on the duties and obligations of the DPRD (Regional People's Representative Assembly). Consequently, better accountability was realized in the fiscal year. The liability above led to the opportunity for Parliament to dismiss the head of the region before the term expires. The Regional Head's responsibility as stipulated in Law Number 22 of 1999 is almost similar to the

⁷ Morissan, *Hukum Tata Negara Republik Indonesia Era Reformasi* (Jakarta: Ramdinn Prakarsa, 2005); Prayudi, "Decentralization in The Indonesian Government System: State Politics in Center-Region Relation," *Jurnal DPR RI* 19, no. 4 (2014): 293–310.

⁸ Ni'matul Huda, "Undang-Undang No. 5 Tahun 1974 Dan Reformasi Pemerintahan Di Daerah," *Jurnal Hukum* 5, no. 48–59 (2008).

⁹ Ni'matul Huda, *Pengawasan Pusat Terhadap Daerah Dalam Penyelenggaraan Pemerintahan Daerah* (yogyakarta: FH UII Press, 2007).

pattern of tasks assigned to the chief executive in a parliamentary system.¹⁰ Besides, another fundamental change related to the responsibilities of the Regional Head in this legislation is the regulation of arrangements regarding legal liabilities. That includes the existence of a mechanism dismissal based on a criminal act. The President discharges the mechanism through the judicial process. However, under the provisions of Articles, 21 and 26 of Government Regulation Number 108 of 2000, the procedure for the accountability of the Regional Head in respect to a particular case is stated as follows

1. The Regional Head and the Deputy are called by the Regional Representative Council or use their initiative to provide information on crime.
2. We are analyzing the crime by the Regional Head based on the request of 1/3 (one-third) of the Board of the Regional Perwakilan.
3. Legislative Council held a plenary session to discuss the information submitted by the Regional Head and the Deputy Head for at least 1 (one) month after they had testified.
4. Legislative Council tends to establish a special committee to investigate the truth about a statement by the Head of the Regional and the Deputy.
5. Based on the results of the investigation carried out by the special committee, the House of Representatives either decides to accept or reject the testimony of the Regional Head following specific purposes.
6. However, assuming the Regional Representative Council rejects its responsibility, the Legislative Council is forced to hand over the settlement to the competent authorities.
7. After obtaining approval from the President through the Governor and the Minister of Home Affairs and Regional Autonomy for Regent or mayor, the probe is carried out. Furthermore, supposing the governor and the deputy are indicted, the President suspends them from office.
8. In addition, supposing the Regent or Mayor and the Deputy are indicted, the Minister of Home Affairs and Regional Autonomy suspends them from office.

Law Number 22 of 1999 was enacted during the era of local government autonomy, especially in the District and City. It was implemented to restore the dignity of the people in the area, provide opportunities for creating political awareness in improving the quality of democracy in the region, efficiency of local public services, accelerating regional development, and in turn, leads to good governance.¹¹ It is based on experiences. The autonomy lays more emphasis on the responsibilities, and the

¹⁰ H.A Komari, *Implikasi Penolakan Laporan Keterangan Pertanggungjawaban Kepala Daerah Dalam Prespektif Hukum Tata Negara* (Purwokerto: FH Unsoed Press, 2009).

¹¹ Syaekani HR, *Otonomi Daerah Dalam Negara Kesatuan* (Yogyakarta: Pustaka Pelajar, 2002).

community was not allowed to take certain decisions or enact specific policies viewed against the Center's interests.¹²

Conceptually, Law 22 of 1999 is based on the implementation of a democratic form of government performance, where its proficiency level is manifested in the election of the Regional Head. The Parliament conducts local elections designated by the Regional Head and Deputy of the Parliament and ratified by the President based on established policies. The leader of the regional administration is responsible for the Parliament. On the contrary, the relationship between the head or leader of the regional administration and the Central Government in respect to the President is stated in Article 44 paragraph (3):

"The Head of the Region needs to submit a report on the regional administration to the President through the Minister of Interior. The Governor, including the District and Regional Heads of State, also needs to be copied at least once a year, assuming it is deemed necessary by the leader of the Regional or requested by the President",

According to J. Kaloh, the Regional Head responsibility performance report models intended to govern the area is genuinely accountable to the indigenes through the Parliament.¹³ It is considered to address their interests. As a result, this leads to dismissal, supposing the accountability of the Regional Head is rejected by the Parliament. Additionally, government policies' responsibilities and financial accountability need to either complement or improve it within 30 days and then be sent back to the Parliament

3.3. Regional Head of Performance Accountability in Act 32 of 2004 and Law Number 23 of 2014

Law Act Number 22 of 1999 mandates that the elected Regional Head is accountable to Parliament. The regional administration functions following legislative dominance over the executives (legislative heavy). That leads to the impression that the council is more potent than the Regional Head. However, from the period Law Number 22 of 1999 was enacted, several dismissed cases related to the Regional Head (governor or regent/mayor) by the Parliament. UU Number 32 of 2004 politically emphasizes the parallels between the Parliament following the Regional Head. It is characterized by the poise and mutual concept between the placement heads and the local house. Those directly elected by the people realize equality. That causes the two institutions in this area not to have an absolute accountability relationship. The Parliament is unable to hold on

¹² Tubagus Muhammad Nasarudin, "Asas Dan Norma Hukum Administrasi Negara Dalam Pembuatan Instrumen Pemerintahan," *Jurnal Hukum Novelty* 7, no. 2 (2016): 139, <https://doi.org/https://doi.org/10.26555/novelty.v7i2.a546>.

¹³ J Kaloh, *Kepemimpinan Kepala Daerah, 1st Ed* (Jakarta: Sinar Grafika Offset, 2009).

to the regional administration. The duties and powers of the Parliament at the Provincial and District or City levels are requesting for accountability information or report (LKPJ). Besides, the governors, regents, and mayors responsible for decentralizing decentralization are no longer authorized to ask the LPJ to dismiss the Regional Head.¹⁴

Further arrangements regarding the Regional Head Accountability Report previously described the authorized duties of the Parliament. The regional administration and services rendered to a society based on transparency and accountability as stipulated in Article 27 paragraph (2) of Law Number 32 of 2004 are as follows.

"Besides the obligation referred to in paragraph (1), the Regional Head also needs to provide a report to the Government, as well as present accountable information to the Council and the public."

Based on the article above, the enactment of Law Number 32 of 2004 stated that the accountability of the Regional Head is reported as follows.

1. Reports of Regional Government
2. Provide reports to Parliament as well as the accountability statement
3. Informing the public about the regional administration reports.

Article 27 of Law Number 32 of 2004 mandates that the accountability report is imposed on the Regional Head, which is submitted to the plenary session of the Parliament concerning the delivery of autonomy and assistance tasks yearly. The provisions concerning LKPJ since the enactment of Law Number 32 of 2004 have been unable to clear the technical implementation of Law Number 32 of 2004. The LKPJ is a Parliamentary tool used to dismiss the Head of Region. However, the LPJ's reason is unacceptable, as previously reported. In addition, LKPJ is the Parliament's recommendation for the improvement of regional governance.

Act Number 32 of 2004 was amended to Act Number 23 of 2014. The essential provisions related to the accountability of regional heads are similar, except there is a new obligation in Article 68 that does not subject the national strategic program to administrative sanctions, suspension, and even permanent dismissal. LKPJ reported that there are no implications for the dismissal of the Head of Region. However, in Article 80, a Regional Head or the representative tend to be dismissed when they break an oath or pledge, violate the law, or due to gross misconduct, and they have to be prosecuted first in the Supreme Court. Subsequently, supposing found guilty, the new Parliament dismisses the President.

LKPJ is a statement made by the Head of the Council regarding the implemented policies agreed upon by the Head of the Parliament for that year. It is realized through the report submitted by the council for improving the local government performance in the

¹⁴ Alan Bayu Aji, "Implikasi Politik Hukum Pengaturan Pertanggungjawaban Kinerja Kepala Daerah Pasca Reformasi," *Jurnal Lex Renaissance* 2, no. 3 (2017): 231–58.

subsequent year. On the contrary, the impeachment process is based on interpellation and a questionnaire used to express ones' opinion. Tersbeut LKPJ mechanism has significantly reduced turbulence in the region, mainly due to the tension between the Head of the Parliament when approved and finalized by Law Number 23 of 2014 regarding the Regional Head Accountability Report stipulated in Article 207.

4. CONCLUSION

The journey of regional autonomy and the change of the government system led to the amendment of the power structure of the new order. The Regional Head accountability arrangements in Act Number 5 of 1974 are centralized. It is reported only to the President through the Minister of Interior, which is the responsibility of the Regional Head. That includes three fundamental considerations under the political guidance and unity of the nation, needs to be able to ensure a harmonious relationship between central and local government on the introductory provisions of the unitary state and the growth of the regional development. It is based on the Regional Head Accountability Law Number 22 of 1999 considering the responsibility performance report sent to the Parliament.

Furthermore, the Head of Regional Head accountability ceases when the Parliament cannot accept the above. While Regional accountability Head in Law Number 32 of 2004 and Law Number 23 of 2014 emphasized the concept of accountability through the Regional Head Regional Government Activity Reports (LPPD) to the Central Government, the Head of Regional Accountability Reports (LKPJ) to Parliament, and the Summary Report Regional Government to the people directly. Accountability report to Parliament is only a recommendation and notes that are suggestions.

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