

JURNAL SINTA 2+The Implementation of Legal Position Regulation of Head

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Submission date: 06-Feb-2023 12:02PM (UTC+0700)

Submission ID: 2007347296

File name: TA_2_The_Implementation_of_Legal_Position_Regulation_of_Head.pdf (371.02K)

Word count: 6291

Character count: 33709

The Implementation of Legal Position Regulation of Head of Services/Agency in Local Government

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Abstract. *The modern rule of law is a basic concept in every government activity. In the development of state administration, government activities are no longer just implementing laws as described in the trias politica concept, but also attaching the authority to make regulations, a decision that is regulating as a legal forum for policies issued. This study aims to analyze the legal position of the head of service/agency regulations that have been used in the administration of local government. The research method used is legal research with a statue approach, and a conceptual approach. The result of this research is that the regulation of the head of the service/agency does not have a position in the legislation as intended in the Act. This study is a normative juridical study, which is aimed at examining legal principles, legal systematics, research on vertical and horizontal synchronization, legal comparisons, and legal history. The result of this research is that the regulation of the head of the service/agency that administers the regional government does not have a legal position in the hierarchy of laws and regulations as regulated in the Act. Material and formal regulations of the head of service/agency are not legal products that contain rageling material. The regulation issued as a form of discretion by the head of the service/agency should only be in the form of a circular letter.*

Keywords: Discretion; Hierarchy; Regulations; Services.

1. INTRODUCTION

Indonesia is a state of law, therefore all affairs of the administration of state life in Indonesia place the law as its basis. This is stated in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia which confirms that Indonesia is a state of law, in other words that every administration of state administration in Indonesia must

place the law as the basis for action. In the context of state administration, this constitutional norm becomes a common reference for all of us in an effort to realize an orderly and orderly state life order, including in terms of the order of legal products for state administration. The logical consequence is that the law must always appear as a means that must color the life of the government in carrying out its constitutional duties. Law is placed as the highest reference in the whole process of state administration. (Bachtiar, 2015) In the context of state administration, there is not a single government action in the field of public law that is not based on the will of the law as is normalized in various government juridical instruments.

In an effort to maintain the consistency of government work in realizing state goals in the context of the welfare state, an orderly order is needed in the administration of government, especially in the context of realizing public welfare (*bestuurzorg*). In the welfare state, the government is burdened with the obligation to organize the public interest (*bestuurzorg*) or seek social welfare, in which the government is given the authority to intervene (*staatsbemoeienis*) in people's lives, within the limits permitted by law. Along with the authority to intervene, the government is also given the authority to make and use laws and regulations. In other words, the government has the authority in the field of legislation. (Ridwan, 2007)

The condition of the state that is in the ideal order can be created on the condition that all positive legal products, especially the laws and regulations that are the source of the validity of the government's authority in acting to realize the goals of the state, are well organized. It is quite logical if the ideal order of positive legal products becomes an important concern in the life of the state in Indonesia. As a country that uses positive law as the basic foundation in the process of administering state organs, the existence of a statutory regulation is certainly an important element in the development of law in Indonesia, including in the administration of regional government within the framework of the Unitary State of the Republic of Indonesia.

In order to realize a good legal product order and ensure legal certainty of laws and regulations in Indonesia, the Government together with the House of Representatives (DPR RI) have issued Act No. 12 of 2011 concerning the Establishment of Legislation. The regulation that was born as an improvement over the previous regulation regulates legal norms in the formation of laws and regulations in Indonesia. Based on Article 7 paragraph (1) of Act No. 12 of 2011, it is regulated that the type and hierarchy of statutory regulations in Indonesia consists of the 1945 Constitution of the Republic of Indonesia, then at the next level there is a legal product of the Decree of the People's Consultative Assembly, followed by Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, and Provincial Regulations, and finally district/city regulations. This article regulates the hierarchical order of laws and regulations in Indonesia starting from the 1945 Constitution of the Republic of Indonesia at the highest level to district/city regional regulations at the lowest level.

In addition to the types of laws and regulations that have been regulated in Article 7 paragraph (1), Act No. 12 of 2011 concerning the Establishment of Legislations also recognizes other laws and regulations that are known in the practice of state life. Provisions related to this matter are regulated in Article 8 paragraph (1). In that article, it is regulated that there are other laws and regulations apart from the laws and regulations as stipulated in Article 7 paragraph (1) which are stipulated by the head of another state institution or agency. These regulations are: regulations stipulated by the

People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, agency, institution or commission of the same level established by Law or the Government on the orders of the Act, the Provincial Regional People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or the equivalent. These regulations can be recognized for their existence and have binding legal force if they meet the requirements as stipulated in Article 8 paragraph (2), namely as long as they are ordered by a higher legislation or are formed based on the authority.

The regulation on the formation of laws and regulations based on the type and stratification of norms in Act No. 12 of 2011 does not necessarily provide comprehensive guidance on the various dynamics of governance in Indonesia. The existence of legal products and laws and regulations as juridical instruments in the administration of government in Indonesia has developed quite significantly. The government is given the freedom to issue regulations as long as it is ordered by a higher statutory regulation or is formed based on the authority it has. Interestingly, it is precisely the formation of legislation "based on authority" that has implications for the "unclear" policy direction for the formation of legislation by the government. Imagine, there are many laws and regulations issued by the government that are sometimes made not only to regulate matters relating to a government organ, but also intersect with the affairs of other government organs, even though the regulations are of the same level. Similar confusion also deserves to be embedded in the administration of local government. It is not uncommon for echelon II level officials (heads of services/agencies) in regional governments to issue legal products in the form of regulatory decisions, commonly known as head of service/agency regulations, which are thought to come from free authority.

The regulation of the head of the agency/agency is one of the legal products known in the administration of regional government. The existence of regulations for the heads of offices/agencies is interesting to understand, considering that in practice many heads of offices/agencies who are echelon II officials within the local government issue regulations for the heads of offices to underlie the policies they issue. These policies are a form of general regulation that is abstract as well as the nature of a regulation. In fact, Act No. 12 of 2011 concerning the Establishment of Legislation does not regulate the existence of regulations of the head of service/agency as one of the legal products of statutory regulations in Indonesia. This problem is narrowed down to a legal issue regarding the regulatory position of the head of service/agency as echelon II officials in the administration of regional government. Regarding this position, it is also related to the legal force of the regulation of the head of department/agency in the implementation of local government.

As a comparison material as well as to determine the novelty possessed in this paper, it is necessary to describe some literature that discusses the same thing. In the literature, there have been quite a number of similar articles that discuss the position of policy regulations in the legal system in Indonesia. For example, Victor Imanuel Nalle wrote about the Position of Policy Regulations in the Government Administration Act (Act No. 30 of 2014 concerning Government Administration) in the Legal Reflection Journal. This paper focuses on issues related to policy regulations introduced into Act No. 30 of 2014 concerning Government Administration. However, Victor Imanuel

Nalle's writing is different from the writing in this article because Victor Imanuel Nalle's writing only focuses his writing on Act No. 30 of 2014 concerning Government Administration to find the legal position of a policy regulation. (Nalle, 2016) There are also articles from Zaka Firma Aditya and M. Reza Winata discussing the position of legislation in Indonesia. This paper is considered quite relevant to the issues currently being discussed, namely related to the position of legal products and legislation in the legal system in Indonesia. This article is entitled "Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia". Zaka Firma Aditya and M. Reza Winata succeeded in identifying the fact that there are problems in regulating legal products in Indonesia which are regulated in Act No. 12 of 2011 concerning the Establishment of Legislation. This is related to the unclear position of various laws and regulations that are not regulated in Article 7 Paragraph (1) of Act No. 12 of 2011 concerning the Establishment of Legislation. These regulations include: ministerial regulations, the position of state institution regulations, and village regulations, as well as the content of presidential regulations which are considered the same as government regulations. Unfortunately, this paper does not discuss specifically about the legal position of the head of service regulations in the administration of local government. (Aditya & Winata, 2018)

In principle, the discussion in the articles mentioned above has not provided a specific and appropriate portion on issues related to the position of head of service regulations in the legal system in Indonesia. Even though this is important to understand considering that in the implementation of regional government it needs to be realized in the framework of legal certainty, especially related to the legal embodiment of various policies issued. For this reason, the novelty that is carried out in this journal article wants to provide clarity regarding the legal position of the head of service regulations in the administration of regional government to support the implementation of policies in the regions in accordance with the principle of legal certainty in order to realize justice for the community.

At the initial stage, the discussion will focus on the description of the hierarchical concept of legal norms known in legal science. In its concept, state legal norms have a tiered nature and find their validity from higher legal norms, higher legal norms also find their validity in higher legal norms to the basic basic norms of the state. Using this concept, then the flow of discussion will be directed at how the laws and regulations in Indonesia are formed, whether through binding authority or with free authority to determine their validity based on the concept of norm level. In the final stage, the discussion will focus on the description of the position of the head of service regulations which are known in the practice of implementing regional government related to the theory of the level of norms and sources of authority possessed.

2. RESEARCH METHODS

This study is a normative juridical study, which is intended to examine legal principles, legal systematics, research on vertical and horizontal synchronization, legal comparisons, and legal history. (Soekanto & Mamudji, 2001) The approach used is the statute approach, and the conceptual approach. The legal approach is done by examining all the legal regulations related to legal issues (legal issues) raised in this study. Various legal regulations related to the authority of the head of department as well as related to the legal products of legislation in positive law in Indonesia become

the focus of analysis in this approach. Furthermore, the conceptual approach moves away from the views and doctrines that develop in the science of law. This approach is used to elaborate on various views of legal experts related to the authority of the head of department/agency as an echelon II official in the implementation of local government.

3. RESULT AND DISCUSSION

3.1. Hierarchical Concept of Legal Norms

State legal norms have a tiered nature and find their validity from higher legal norms, higher legal norms also find their validity at higher legal norms to the basic basic norms of the state. In law, this is known as the theory of norm level. Adolf Merkl is one of the founders of this theory. In his view, Adolf Merkl, who said that a legal norm is above it originates and becomes a source for the legal norms below it, so that a legal norm has a relative validity period (*rechtskracht*), therefore the validity period of a legal norm depends on the legal norm. above it so that if the legal norms above it are revoked or deleted, then the legal norms under it are revoked and erased as well. (Indrati, 2006)

Another figure who shares the same view regarding the stratification of norms is Hans Kelsen. His theory regarding the level of legal norms (*stufentheori*), contains the opinion that legal norms are tiered and layered in a hierarchical structure, where a lower norm applies, originates, and is based on a higher norm, a higher norm, higher values apply, originate and are based on even higher norms, and so on until they arrive at a norm that cannot be traced further and is hypothetical and fictitious. So the basic rules above are often called *grundnorm* or *ursprungnorm*. According to Kelsen, the *grundnorm* in general is a *meta juridisch*, not a product of the legislature (*de wetgeving*), not part of the laws and regulations, but is the source of all sources of the legislative order under it. The basic norm which is the highest norm in the norm system is no longer formed by a higher norm, but the basic norm is determined in advance by the community as a basic norm which is a hanger for the norms under it so that a basic norm is said to be pre-determined. -supposed.

Hans Nawiasky provides a refinement of Hans Kelsen's *Stufenbau Theory* regarding the level of legal norms. According to Nawiasky, that in addition to the norms that are layered and tiered, the legal norms of a country are also grouped, and the grouping of legal norms within a country is arranged in the Constitutional Order of State Legal Norms (*die Stufenordnung der Rechtsnormen*) in four levels, that is:

1. Staats Fundamentalnorm/Grundnorm (fundamental norms of the state).
2. Staatsgrund Gezets (state policy/state principle).
3. Formell Gezets (The law).
4. Verordnung & Autonome Satzung (instruction regulations and autonomy rules)

The levels of legal norms are almost always present in the arrangement of legal norms for every citizen, even though they have different terms or the number of different legal norms at each level. (Indrati & Farida, 2007).

1. Regulation in Indonesia

The legal products of laws and regulations are born from the binding authority of state institutions in Indonesia. In the context of the national legal system, the regulation regarding the level of legislation in Indonesia refers to Act No. 12 of 2011 concerning the Establishment of Legislations (Act 12/2011). The law regulates statutory regulations that are recognized for their existence in the positive legal system in Indonesia, starting from the Basic Law as the state constitution at the highest level to district/city regional regulations at the lowest level. Article 7 paragraph (1) of Act No.12 of 2011 regulates the types and order of laws and regulations, namely:

- 1) the Constitution of the Republic of Indonesia in 1945;
- 2) Resolution of the People's Consultative Assembly;
- 3) Government Laws/Regulations Substituting for Laws;
- 4) Government regulations;
- 5) Presidential decree;
- 6) Provincial Regulations;
- 7) Regency/City Regional Regulation

Apart from the types of laws and regulations that are determined based on the stratification of these norms, Law 12/2011 also recognizes the existence and legal force of other laws and regulations that are known in the practice of state life but are not clearly regulated in Indonesian laws and regulations. The laws and regulations that are recognized in positive law in Indonesia are the laws and regulations established by the People's Consultative Assembly of the Republic of Indonesia (MPR RI), the People's Representative Council of the Republic of Indonesia (DPR RI), the Regional Representative Council of the Republic of Indonesia (DPD RI), The Supreme Court of the Republic of Indonesia (MA RI), the Constitutional Court of the Republic of Indonesia (MK RI), the Supreme Audit Agency of the Republic of Indonesia (BPK RI), the Judicial Commission of the Republic of Indonesia (KY RI), Bank Indonesia, the Minister, agency, institution, or commission of the same level formed by law or by the Government on the orders of the Act, the Provincial DPRD (provincial DPRD), the Governor, the Regency/City Regional People's Representative Council (district/city DPRD), the Regent/Mayor, the Village Head or the equivalent. These regulations can be recognized for their existence and have binding legal force if they meet the requirements as stipulated in Article 8 paragraph (2) of Law 12/2011, namely::

"as long as ordered by the higher Legislation is formed on the basis of authority."

In the concept of legal science, there are only two types of statutory regulations seen from the basis of the authority for their formation, namely statutory regulations formed on the basis of:

- 1) attribution of the formation of laws and regulations;
- 2) delegation to the formation of legislation;

The attribution of legislative authority is the creation of authority (new) by the constitution/*grondwet* or by the legislator (*wetgever*) given to a state organ, both existing and newly formed for it. (Attamimi, 1990) In the context of the legal system in Indonesia, attribution legislation in the 1945 Constitution of the Republic of Indonesia is in the form of Laws, Government Regulations, Government Regulations in Lieu of Law (Perpu) and Regional Regulations (Perda). In Act No. 12/2011 concerning the Establishment of Legislative Regulations is also known as one type of attribution legislation outside the 1945 Constitution, namely the Presidential Regulation (Perpres), which in the past was known as a Presidential Decree which was.

While the notion of delegation in the field of law is the transfer/ assignment of authority to form regulations from the original delegating authority (*delegatie*) to the receiving delegation (*delegataris*) with the responsibility of implementing that authority on the delegate himself, while the responsibility of the delegate is limited. (Attamimi, 1990) In Indonesia's positive legal system, this type of regulation is for example reflected in Article 11 of the Government Regulation on the Management of Civil Servants, which states that: "*Further provisions regarding the procedures for implementing the preparation of civil servant requirements are regulated by the Head of BKN Regulation.*"

The Regulation of the Head of the State Civil Service (Badan Kepegawaian Negara, BKN) which is formed on the basis of orders from the Government Regulation is categorized as legislation on the basis of delegated legislation. Thus, in general delegation legislation is legislation established on the basis of a higher order of legislation.

2. Policy Rule Concept (*Beleidsregel*)

In the previous discussion, it can be understood that based on Act No. 12 of 2011 concerning the Establishment of Legislation (Act 12/2011) there are many forms of laws and regulations that are recognized as being and are binding in the administration of the state. However, in the administration of government in Indonesia, government officials often issue certain policies that are outlined in the form of certain regulations so as to produce policy regulatory products (*beleidsregel*, policy rule) which have different characteristics of legislation as regulated in Law 12/2011. The products of this policy regulation are usually born from the use of the free authority they have. The product of policy regulations cannot be separated from the use of *Freies Ermessen*, namely the relevant state administrative body or official formulating its policies in various forms of "*juridische regels*" such as regulations, guidelines, announcements, circulars and announcing the policy. (Hadjon, 2005) *Freies Ermessen* is the freedom of state administration to take an action (by doing or not doing) to achieve certain goals or benefits (*doelmatigheid*) outside the limits of applicable provisions. However, it does not mean that it can be done in or for something that is against the law. Control over the *Freies Ermessen* principle is the general principles of good state administration (*algemene beginselen van behoorlijk bestuur*). (Manan, 2006) *Freies Ermessen* in its implementation pays attention to the appropriateness or appropriateness in accordance with the factual circumstances faced by administrative officials. (Sibuea, 2010) According to Bagir Manan (2006), as regulations that are not statutory regulations, policy regulations are not directly legally binding but contain legal relevance. (Sibuea, 2010)

The definition of policy regulations in the Indonesian legal system cannot be found in the various existing laws and regulations. The laws and regulations in Indonesia have not specifically regulated the meaning of policy regulations, including Act No. 12 of 2011 concerning the Establishment of Legislations as the legal basis for reference to the types and forms of legislation in force in Indonesia. The absence of such regulators is sufficient to show that policy regulations are not legal issues that are the subject matter of Act No. 12 of 2011. Constructing the meaning of policy regulations in Indonesia can be done by referring to the opinions of legal experts. (Manan & Magnar, 1997)

Bagir Manan and Kuntana Magnar (Manan & Magnar, 1997) argues that one of the main characteristics of policy regulations is the absence of government authority to make these regulations. The phrase "the absence of government authority" can be understood as a form of the absence of laws and regulations governing the subject matter of the policies that will be regulated in these policy regulations. Furthermore, Bagir Manan considers that the policy regulations are not directly legally binding even though they still contain legal relevance. The binding power is only for the agency or official of the state administration itself.

Policy regulations are born from the notion that there are no perfect laws and are able to answer the dynamic needs of government administration. According to Shidarta, this kind of condition is caused by positive law, as a legal product, which is always perceived as photographing the community in the context of a certain (synchronic) part of time. The results of this portrait show the legal system as a momentary legal system. On the other hand, consciously or unconsciously, society is always in process, while legal products tend to crystallize. (Sidharta, 2013:27-28) In another perspective, in the understanding of the state of law, all governmental actions must be based on valid and written legislation. Such written legislation must exist and apply before or precede the administrative action or deed taken. Thus, every act or action of the administration must be based on rules or 'rules and procedures' (regels). (Asshiddiqie, 2006) Therefore, then the government has free authority (vrije bevoegdheid) or commonly called *freies ermesen/discretionary power* (discretion). This free authority then conceptually gave birth to policy regulations (beleidsregels) which are often used in the practice of administering government.

In positive law in Indonesia itself, the word discretion can be found in Act No. 30 of 2014 concerning Government Administration. In Article 1 point 9 of Act No. 30 of 2014 concerning Administration, it is stated that the form of discretion is limited to decisions and/or actions that are determined and/or carried out by Government Officials to overcome concrete problems faced in the administration of government in terms of laws and regulations. invitations that provide choices, do not regulate, are incomplete or unclear, and/or there is government stagnation. The discretionary arrangements contained in Act No. 30 of 2014 concerning Administration have created confusion regarding the position of policy regulations in the legal system in Indonesia. The definition regulated in the Government Administration Law is different from the concept of discretion known so far. Discretion in its form as a policy regulation is not only in the form of a decision/decision but can also be in the form of: 1) circular, 2) warrant or instruction; 3) work guidelines or manuals, 4) implementation instructions (juklak), 5) operational/technical instructions (juknis), 6) instructions, 7) announcements, 8) guidebooks (guidance), 9) terms of reference or Term of Reference

(TOR), and 10) work design or project design (project design) whose materials are regulatory and binding in general. (Asshiddiqie, 2010:34-35)

3. Position of Head of Service/Agency Regulations in Local Government Administration.

In the legal system in Indonesia, the existence of legal products in the form of regulations for the head of the agency/agency is an inseparable part in the practice of administering regional government. However, Act No. 12 of 2011 concerning the Formation of Legislation (Act 12/2011) does not recognize the existence of a head of service regulation as part of the statutory regime in Indonesia as stated in Article 7 Paragraph (1) and Article 8 Paragraph (1). Law 12/2011 only recognizes the existence of statutory regulations in the form of provincial regulations, district/city regional regulations, regulations stipulated by the Provincial DPRD, Governor, Regency/City Regional People's Representative Council, Regent/Mayor, Village Head or which is equivalent to a recognized and binding regulation in the practice of administering regional government in Indonesia.

In practice, often the head of the agency/agency as an echelon II official in the local government environment issues a policy that is embodied in the form of a legal product in the form of a head of service regulation. If you look closely, the practice of issuing head office regulations in Indonesia has the following forms:

- 1) implementation instructions, technical instructions, guidelines set by the official head of the agency/agency whose scope of regulation is internal shall apply to the echelon II work unit.
- 2) implementation instructions, technical instructions, guidelines set by the official head of the service/agency whose scope of regulation applies outside the echelon II work unit environment.

The following are some examples of the regulations of the head of the agency/agency, namely:

- 1) Regulation of the Head of the Bantul Regency Education and Sports Office Number 177 of 2017 concerning Technical Instructions for Admission of New Students for Kindergarten, Elementary and Junior High Schools in Bantul Regency for the 2017th/2018th Academic Year;
- 2) Regulation of the Head of the Kulonprogo Regency Education and Sports Office Number 110 of 2017 concerning Guidelines for Admission of New Students (PPDB) in Kindergarten, Elementary, and Junior High Schools for the 2017th/2018th academic year;
- 3) Regulation of the Head of the Office for Supervision and Control of Buildings in the Special Capital Region of Jakarta Number 3 of 2014 concerning Technical Requirements for Buildings in the Architectural Sector;
- 4) Head of the District Education, Youth and Sports Office. Gunung Kidul Number : 052 Year 2019 About Substitute Teachers;

If you look at the authority of the head of service based on Article 208 of Act No. 23 of 2014 concerning Regional Government (Act 23/2014), the head of the service/agency

is an official who serves as the head of the regional apparatus, and the regional apparatus is an assistant element to the regional head and DPRD. Service and agency are elements of regional apparatus that are formed to carry out government affairs that are under the authority of the region. In Article 217 it is emphasized that the authority of the head of service is to assist regional heads in carrying out government affairs which are the authority of the regions. The head of the service in carrying out his duties is responsible to the regional head through the regional secretary. Meanwhile, the head of the agency has the task of assisting the regional head in carrying out the supporting functions of government affairs which are the authority of the region. The head of the agency in carrying out his duties is responsible to the regional head through the regional secretary.

Observing the regulations governing the existence of heads of offices/agencies in Law 23/2014 and Law 12/2011, it can be understood that heads of agencies/agencies are officials who head regional apparatuses tasked with assisting regional heads in carrying out government affairs that are under regional authority. The head of the service does not have the authority to make legal policies that are generally applicable (rageling). The regulatory authority in the form of regulatory legal products is only owned by the regional head as the organizer of the regional government together with the DPRD. In the context of the administration of regional government, Indonesian law only recognizes the legal products of regional regulations and the legal products of regional head regulations as regulatory legal products. This is in line with the provisions in Law 12/2011 which only recognizes legal products of regional regulations and regional head regulations as products of legislation whose existence and validity are recognized. The legal products of the head of service regulations that are known in the practice of administering regional government so far have no legal validity/legal position in the hierarchy of laws and regulations.

The regulation of the head of the service/agency issued by the head of the service/agency as a government administration official is also unfounded if it is said to be a legal product born of free authority (pouvoir discretionnaire) or discretion. Referring to Act No. 30 of 2014 concerning Government Administration (Act 30/2014), that discretion is only related to the authority to make decisions and/or actions aimed at:

- 1) expedite the administration of government;
- 2) fill legal voids;
- 3) provide legal certainty;
- 4) overcome the stagnation of government in certain circumstances for the benefit and public interest.

Then the discretion concerns things, namely: :

- 1) making decisions and/or actions based on the provisions of laws and regulations that provide a choice of decisions and/or actions;
- 2) decision making and/or action because the laws and regulations do not regulate
- 3) making decisions and/or actions because the laws and regulations are incomplete or unclear;

- 4) decision-making and/or action due to government stagnation for the wider interest.

If you look at the clauses of the article, Law 30/2014 seems to give a hint that the legal product of the head of service/agency regulation is a legal product born of discretion in the form of government action. However, if it is interpreted by the ability of the head of the service/agency to make regulations that are *regeling*, not *beleidregel*, then this has exceeded the authority of the head of the agency/agency. Because in the hierarchy of positions, the head of the agency/agency only has the authority to assist regional heads. The authority to make *regeling* regulations rests with the regional head, in this case the regent/mayor.

Law 30/2014 states that discretion is a form of Decision and/or Action established and/or taken by Government Officials to address concrete issues faced in the administration of government in terms of legislation that provides options, does not regulate, is incomplete or not clearly, and/or the existence of government stagnation, it means only the product of decisions (*beschikking*) and actions of government administrative officials, which can be in the form of *beleidregel*. Decision (*beschikking*) is a written ruling issued by the Agency and/or Government Officials in the administration of government. In this Law, the product of the decision is also known as the State Administrative Decision or the State Administrative Decision. In Act No. 51 of 2009 on the Second Amendment to Act No. 5 of 1986 on State Administrative Justice in Article 1 it is stated that

"A State Administrative Decision is a written stipulation issued by a state administrative body or official that contains state administrative legal actions based on applicable laws, which are concrete, individual, and final, which have legal consequences for a person or civil law "

Based on the explanation of Act No. 5 of 1986 concerning the State Administrative Court, it is explained that it is concrete, meaning that the decision is not abstract, but tangible, certain or can be determined, individual in nature, meaning that it is not intended for the public, but is specific, both in terms of address and destination. . If more than one person is addressed, each name of the person affected by the decision is mentioned, while it is final, meaning that it is definitive and therefore can have legal consequences.

The legal product of the head of service/agency regulation if it is interpreted as a product of *regeling* discretion then this violates the concept of the formation of legislation as described in Law 12/2011. In Law 12/2011 it is explained that the laws and regulations are:

"written regulations containing generally binding legal norms and established or prescribed by state institutions or authorized officials through procedures prescribed in the Legislation "

4. CONCLUSION

The regulation of the head of the service/agency that administers the regional government does not have a legal position in the hierarchy of laws and regulations as regulated in Act No. 12 of 2011 concerning the Establishment of Legislative Regulations. Material and formal regulations of the head of service/agency are not

legal products that contain rageling material. The legal position of the head of service/agency regulations is only as a *beleidregel*, as a result of the discretion exercised for *doelmatigheid*. However, the use of the name of the regulation of the head of the agency/agency is not appropriate, because in terms of the authority that has been regulated in Act No. 23 of 2014 concerning Regional Government, the head of the service/agency is an official who assists the regional head in carrying out government affairs which are the authority of the region. The regulation issued as a form of discretion by the head of the service/agency should only be in the form of a circular letter. Because the legal norms regulated in it are implementing instructions, and/or technical guidelines for a policy. If the legal norms that are made want to have a strong and binding legal position in general, then they should be made in a regional head regulation.

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