

Legality Of Actions Of The Government Of The Regent Of The Regent Of The Regent Of Central Maluku Related To The Issuance Of Decision Number: 141-458 Of 2018 Concerning Approval Of The Head Of The State Government Of Lilibooi, West Leihitu District

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Abstract : The realization of State Administration Acts can be classified into three things, namely: issuing decisions (beschkking), issuing regulations (regelling) and carrying out material actions (materiale daad). This means that every action that causes a dispute in the field of administrative law in general as a result of the implementation of the duties and authorities of a State Administration Officer consists of the three things above, thus without an administrative act, of course there will be no administrative dispute. The administrative actions carried out by the Central Maluku Regent by issuing Decree Number: 141-458 of 2018 concerning Ratification of the Head of the Lilibooi State Government, West Leihitu District, dated December 20, 2018 have fulfilled the legal aspects of government actions which include authority, procedure, and substance as well as aspects of Algemene Beginselen Van Behoorlijk Bestuur (General Principles of Good Governance), despite violating the provisions of Article 40 paragraph (1) of Regional Regulation Number 03 of 2006 concerning Procedures for Nomination, Election, and Inauguration of the Head of the State Government, which emphasized that prior to the inauguration of the Head of the State Government by The Regent or other appointed official, the Inauguration of Title is carried out based on local customs and customary law, and therefore cannot be canceled. This research will use normative legal research type. Normative legal research was conducted to examine legal concepts related to the legitimacy of government acts and assisted by empirical research to obtain field data at 2 (two) locations of government administration which include: Central Maluku District Government and Lilibooi State, West Leihitu District, Central Maluku District . The results of the study show: 1). Government actions taken by the Central Maluku Regent by issuing Decree Number: Number: 141-458 of 2018 concerning the Ratification of the Head of the Lilibooi State Government, Leihitu Barat District, December 20, 2018 have fulfilled the legality aspect of government action which includes authority , procedures, and substance and aspects of Algemene Beginselen Van Behoorlijk Bestuur (General Principles of Good Governance).2). The legal consequences of government actions carried out by the Central Maluku Regent by carrying out the Inauguration of the Head of the Lilibooi State Government were not preceded by the Inauguration of Titles in accordance with Customs and Customary Law, having the legality of government actions so that they cannot be canceled. Based on the results of the research above, several things are recommended to the Government, namely: 1) Government administration carried out by state administrative officials in the form of the use of authority must still refer to the provisions in the laws and regulations as a source of authority. 2). In order to avoid juridical defects in the administration of government related to the use of authority, it is hoped that in the use of this authority the Government, in this case the Regent of Maluku, is using the principle of legality as a reference for governance.

Keywords: Legitimacy, Government Actions, *Mata Rumah Parenta*, Lilibooi

1. INTRODUCTION

The Unitary State of the Republic of Indonesia is a Pancasila Law State so that in administering government in a legal state including the Unitary State of the Republic of Indonesia, it always faces the fulfillment of the basic needs of the community as part of the task of administering the state in a state of law which is not only a night watchman (*nachtwachterstaat*) to maintain order and peace. . In a state that adheres to the rule of law, law is used as the basis for administering government and in that arena, law is placed as the main source in the administration of state, government, and society, or it can be said that in a state of law, the existence of law is used as a means of managing state life, government. , and society and in sociale rechtsstaat (community law state) or sociale democratische *rechtsstaat* where the government has a function to control people's lives by using juridical

instruments (including discretion) and on the other hand allows the community to participate in this control. (Nirahua Garciano. et al, 2020:1)

In sociale rechtsstaat, the Government (*Berstuur*) has 2 (two) positions that are more directed at the main functions of government. First, the government is the ruler who has the authority to make rules that must be obeyed by the community in order to create public order and peace. Second, the government is domiciled as a public servant (public servant) is also required to perform public services (public service). The position of the government is like that, so sociale rechtsstaat prioritizes legal protection for the community because the nature of sociale rechtsstaat the government must pay attention to "the right to receive". This is where the position of the government as a servant and the community as the party being served (Nirahua, Salmon E.M 2017:1).

Government actions, especially *Beschikking* issued by the government (*Bestuur*) must pay attention to the legal aspects of government actions which include aspects of authority, procedure, and substance or based on the formulation of Article 66 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, that "Decisions only can be canceled if there are defects:

- a. Authority;
- b. Procedure; and/or
- c. substance.

That the principle of legality is the main element in every government action. The principle of legality means that every government action must be based on applicable laws and regulations.

That the Decree of the Central Maluku Regent Number: 141-458 of 2018 concerning the Ratification of the Head of the Lilibooi State Government, West Leihitu District, dated December 20, 2018 on behalf of Orelus Caesar Kastanya will be analyzed in the form of research whether it meets or does not meet the legal aspects of government acts which include authority, procedures, and substance and aspects of *Algemene Beginselen Van Behoorlijk Bestuur* (General Principles of Good Governance).

Every government action is required to rely on legitimate authority. Authority as the basis for implementing government functions and is carried out based on applicable laws and regulations. This authority is obtained through three sources, namely attribution, delegation and mandate.

The government in acting to issue government acts, especially *Beschikking*, must pay attention to the legal aspects of government actions which include aspects of authority, procedure, and substance or based on the formulation of Article 66 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, that "Decisions only can be canceled if there are defects:

- a. Authority;
- b. Procedure; and/or
- c. substance.

In every government action, the principle of legality becomes the main element. This means that the principle of legality means that every government action must be based on the applicable laws and regulations. Related to this, the Regent of Central Maluku issued a Decree Number: 141-458 of 2018 concerning Ratification of the Head of the Lilibooi State Government, Leihitu Barat Subdistrict, on December 20, 2018 has fulfilled or did not meet the legal aspects of government actions which include authority, procedure, and substance as well as aspects of *Algemene Beginselen Van Behoorlijk Bestuur* (General Principles of Good Governance). The Regent of Central Maluku Regency in issuing the Decree, and inaugurating the Head of the Lilibooi State Government, without paying attention to the provisions of Article 40 paragraph (1) of Regional Regulation Number 03 of 2006 concerning Procedures for Nomination, Election, and Inauguration of the Head of the State Government, which confirms that before Inauguration of the head of the State Government by the Regent or other appointed official, inauguration of the title is carried out based on local customs and customary law.

The Regent of Central Maluku Regency in accordance with Regional Regulation Number 03 of 2006 concerning Procedures for Nomination, Election, and Inauguration of the Head of the State Government has delegation authority to issue a Decree on Ratification of the Head of State Government in Central Maluku Regency including the Head of the State Government of Lilibooi. Regional Regulation Number 03 of 2006, laid the basis for realizing legal certainty for the countries in Central Maluku Regency in the determination of the head of the state government called Upu Latu (King).

Central Maluku District Regulation Number 3 of 2006 concerning Procedures for Nomination, Election, and Inauguration of the Head of State Government, confirms the authority of the Central Maluku Regent, as stated in Article 37, Article 38 paragraph (1), Article 39, Article 40 paragraph (1) as follows:

Article 37 The decision of the state Saniri or BPN regarding the stipulation of the Head of State/State Administrative Government is reported to the Regent through the Camat no later than 7 (seven) days after its stipulation. Article 38 paragraph (1) The elected Head of State/Administrative Government is approved by the Regent by issuing a Regent's Decree concerning the ratification of the elected Head of State/Administrative Government. Article 39: The inauguration of the Head of State/Administrative Government is carried out by the Regent or other appointed official. Article 40 paragraph (1) Prior to the inauguration of the head of the State Government by the Regent or other appointed official, a Title Inauguration is carried out based on local customs and customary law.

The head of government of the State of Lilibooi who was appointed by Saniri of the State of Lilibooi and ratified by his appointment by the Regent of Central Maluku with the Decree of the Regent of Central Maluku Number: 141-458 of 2018 concerning the Ratification of the Head of the Government of the State of Lilibooi, District of West Leihitu, December 20, 2018 on behalf of Orelus Caesar Kastanya, and has been appointed by the Regent of Central Maluku. And because it relates to the legitimacy of government actions, it turns out that based on the provisions in the Central Maluku Regency Regional Regulation Number 3 of 2006 concerning Procedures for the Nomination, Election, and Inauguration of the Head of the State Government as

a source of authority in the appointment of the Head of the State Government (Upu Latu/Raja) in the Regency. Central Maluku, apparently did not meet the provisions of Article 40 paragraph (1) which stated that "the Head of the State Government is sworn in by the Regent or other appointed official, and the Title Inauguration is carried out based on local customs and customary law".

The stipulation and appointment and inauguration of the Head of the State Government of Upulatu (Raja) Lilibooi does not meet the provisions of Article 40 paragraph (1), namely, prior to the inauguration of the head of the State Government by the Regent or other appointed official, a Title Inauguration is carried out based on local customs and customary law, and because of that, it raises legal problems, especially aspects of the legality of government actions. Therefore, this research was conducted with the aim of :

1. To examine and analyze the Government Actions carried out by the Central Maluku Regent by issuing Decree Number: 141-458 of 2018 concerning the Ratification of the Head of the Lilibooi State Government, Leihitu Barat District, December 20, 2018 whether it fulfills the legal aspects of government actions which include authorities, procedures, and the substance and aspects of *Algemene Beginselen Van Behoorlijk Bestuur* (General Principles of Good Governance).
2. To examine and analyze the legal consequences of Governmental Actions carried out by the Central Maluku Regent by inaugurating the Head of the Lilibooi State Government prior to the Inauguration of Titles based on customs and customary law.

B. Problem Formulation

1. What Government Actions were taken by the Central Maluku Regent by issuing Decree Number: 141-458 of 2018 concerning the Ratification of the Head of the Lilibooi State Government, Leihitu Barat District, December 20, 2018 whether it fulfilled the legal aspects of government actions which included authority, procedure, and substance as well as aspects of *Algemene Beginselen Van Behoorlijk Bestuur* (General Principles of Good Governance).
2. What are the Legal Consequences of Government Actions carried out by the Regent of Central Maluku by inaugurating the Head of the Lilibooi State Government before the Inauguration of Titles was carried out based on customs and customary law.

C. Conceptual Framework

1. Authorities and Ways of Obtaining Government Authorities

Various literatures often find the terms power, authority, and authority. Power is the core of the administration of the state, so that the state can organize a good government, the state (organ) must be given power. With this power, the state can cooperate and serve its citizens. In this regard, Max Weber calls power related to law as rational or legal authority, namely authority based on a legal system that is understood as rules that have been recognized and obeyed by the community and even strengthened by the state. (Max Weber Dalam Setiardja, A. Gunawan, 1990: 52)

The principle of legality (*legalitet beginsel* or *het beginsel van wetmatigheid van bestuur*) is the main pillar of the rule of law, based on the principles implicit in the authority of the government that comes from the laws and regulations.

Authority does not only include making government decisions (*besluit*), but includes authority in carrying out tasks, and the formation of authority and distribution of authority are mainly stipulated in the constitution. (Hadjon P M, in Malik, 2007:31)

Authority is an important part of administrative law, because the new state administration can carry out its functions on the basis of the authority obtained through statutory regulations. (Nirahua and Pietersz, 2019:26)

Law Number 30 of 2014 concerning Government Administration clearly regulates the meaning of authority and authority. In Article 1 point 5 it is emphasized that "authority is the right of a Government Agency and/or Official or other state administrator to make decisions and/or actions in the administration of government. While related to authority, it is emphasized in Article 1 point 6 "The authority of the government, hereinafter referred to as Authority, is the power of Government Agencies and/or Officials or other state administrators to act in the realm of public law.

Authority as a public law concept consists of at least 3 (three) components, namely:

- 1) influence;
- 2) legal basis;
- 3) legal conformity

The influence component is that the use of authority is intended to control the behavior of legal subjects. The basic component of the law is that authority must always be able to designate a legal basis. The component of conformity implies the existence of standards of authority, namely general standards (all types of authority) and special standards (for certain types of authority).

Public legal entities in the form of states, governments, departments, local governments, institutions to be able to carry out their duties require authority. The granting of authority to these public legal entities can be seen in the constitutions of each country.

Authority is the power to act, the power to make decisions, to govern and to delegate responsibility to others. Against this, Nicolai stated that: (Nicolai P, et.al., in Ridwan HR, 2006,:103) *Het vermogen tot het verrichten van bepaalde rechtshandelingen (handelingen die op rechtsgevoelg gericht zijn en dus ertoe strekken dat bepaalde onrestance teniet gaan)*. The ability to take certain legal actions (ie actions that are intended to cause legal consequences, and include the emergence and disappearance of certain legal consequences). Thus, authority is said to be legal power, because authority as a concept of public law always has to get clear arrangements both in constitutional law and in administrative law, thus through this arrangement it gives power or ability to state administrative officials to take actions that cause consequences in the field of public law.

In line with the main pillar of the rule of law, namely the principle of legality (*legaliteits beginselen* or *het beginsel wetmatigheid van bestuur*), on the basis of this principle that government authority comes from statutory regulations, meaning that the source of government authority is based on statutory regulations. Ridwan HR further said that: every state and government administration must have legitimacy, namely the authority granted by law. Thus, the substance of the principle of legality is authority. As said by P. Nicolai, et.al; who said that: "Het vermogen tot het verrichten van bepaalde rechtshandelingen", (Ridwan H.R., 2006:100) (the ability to perform certain legal actions).

Regarding the source of authority stated, Philipus M. Hadjon (Hadjon P.M, 2005:130) states, at least the basis of authority must be found in a law, if the ruler wants to place obligations above the citizens. Thus in it there is a democratic legitimacy. Through the law, the parliament as the legislator who represents the electorate participates in determining what obligations are appropriate for citizens.

Based on the source of authority, namely legislation, it will be known how to obtain government authority, both attribution, delegation, and mandate.

Attribution authority is the authority to make decisions (*besluit*) which is directly sourced from the law in a material sense. Another formulation says that attribution is the formation of certain authorities and their granting to certain organs and those who can form authority are the authorized organs based on statutory regulations.

Law Number 30 of 2014 concerning Government Administration defines the attribution authority as emphasized in Article 1 number 22, namely "Attribution is the granting of Authority to Government Agencies and/or Officials by the Constitution of the Republic of Indonesia or the Law" This right means, the attribution of authority is obtained by Government Officials and State Institutions/Government Agencies not only through legislation but also through the Constitution of the Unitary State of the Republic of Indonesia.

Delegation of authority in the form of delegation is a delegation of authority from Government Officials and Government Institutions who obtain attribution of authority to other government agencies. The definition of delegation in the Dutch wet which is famous for the abbreviation AWB (*Algemene Wet Bestuursrecht*). In Article 10: 3 AWB, delegation is defined as the transfer of authority (to make a "besluit") by a government official (state administrative official) to another party and the authority is the responsibility of the other party. (J.B.J.M. ten Berge in Hadjon P.M., 1997:5) Those who give/delegate authority are called delegans and those who receive are called delegates. So a delegation is always preceded by an attribution of authority.

In relation to the concept of delegation as described above, according to Law Number 30 of 2014 in Article 1 number 23 it is stated "Delegation is the delegation of Authority of higher Government Agencies and/or Officials to lower Government Agencies and/or Officials with responsibility for and responsibility shifts completely to the recipient of the delegation. This means that, in the delegation of delegation authority, it does not occur between superiors and subordinates, but between higher government officials from other government institutions to lower

Government Officials at other Government Institutions, and if there is delegation of authority by delegation, the responsibility and the responsibility of the delegates (delegating providers) to the delegates (receiving delegations).

Delegation in the form of a mandate does not occur in the sense of any delegation of authority, the mandated official (*mandataris*) acts for and on behalf of the mandate giver (*mandans*). In granting the mandate, the official who gives the mandate (*mandans*) appoints another official (*mandataris*) to act on behalf of the commander (*mandatory*) and this has been confirmed in Article 1 point 24 of Law Number 30 of 2014 which emphasizes "Mandate is the delegation of Authority" from higher government agencies and/or officials to lower government agencies/or officials with responsibility and accountability remaining with the mandate giver."

2. The concept of government action and legal aspects of government action

Theoretically, the realization of State Administration Actions can be classified into three things, namely: issuing decisions (*beschikking*), issuing regulations (*regelling*) and carrying out material actions (*materiale daad*).

Government action (*bestuurshandelingen*) is every action or deed carried out by the government as a government tool (*bestuurs organ*) in carrying out government functions (Setiawan, et.al, 2017: 87).

Regarding the definition of government action, Law Number 30 of 2014 in Article 1 point 8 emphasizes "Action of the government, hereinafter referred to as action, is the act of a government official or other state administrator to perform and/or not to perform concrete actions in the context of administering the government.

Decisional government actions (*beschikking*) are regulated in Article 1 number (9) of Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning the State Administrative Court, affirming: "State Administrative Decisions are written decisions issued by a State Administration Agency or Official containing legal actions of State Administration based on the applicable legislation that are concrete, individual, final and actions that have legal consequences for a person or civil legal entity.

The definition of *beschikking* is expanded in Article 87 of Law 30 of 2014 affirming "With the enactment of this Law, the State Administrative Decisions as referred to in this Law, the State Administrative Decisions as referred to in Law Number 5 of 1986 concerning Administrative Courts State Enterprises as amended by Law Number 9 of 2004 and Law Number 51 of 2009 must be interpreted as:

- a. A written determination which also includes factual actions;
- b. Decisions of TUN Bodies and/or Officials in the executive, legislative, judicial, and other state administrations;
- c. Based on statutory provisions and AUPB;
- d. is final in a broad sense;
- e. Decisions that have the potential to have legal consequences; and/or

f. Decisions that apply to society.

Thus, government action (bestuurshandeling) is an act or deed carried out by government equipment in carrying out government functions.

Government actions issued by government officials as mentioned above must meet the legal aspects of government actions which include aspects of authority, procedure, and substance or based on the formulation of Article 66 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, that "Decisions only can be canceled if there are defects:

- a. Authority;
- b. Procedure; and/or
- c. substance.

In addition to the three aspects above, Algemene Beginselen Van Behoorlijk Bestuur (General Principles of Good Governance) is also an aspect that must be used as an aspect to assess the legality of government actions.

Every government action is required to rely on legitimate authority. Authority as the basis for implementing government functions and is carried out based on applicable laws and regulations. The authority is obtained through three sources as mentioned above, namely attribution, delegation and mandate. Attribution authority is usually outlined through the division of state power or determined by law, delegation and mandate authority are powers that come from delegation.

Government actions taken against the source of authority, then there is an act of abuse of authority.

Regarding acts of abuse of authority as confirmed in the provisions of Article 17 of Law 30 of 2014 concerning Government Administration as follows:

Paragraph (1) Government agencies and/or officials are prohibited from abusing their authority. Paragraph (2) prohibition of abuse of authority as referred to in paragraph (1) includes:

- a. Prohibition of exceeding authority;
- b. Prohibition of mixing authority; and/or
- c. Prohibition of acting arbitrarily

Article 18 paragraph (1) Government agencies and/or officials are categorized as exceeding the authority as referred to in Article 17 paragraph (2) letter a if the decisions and/or actions taken:

- a. Exceeding the term of office or the time limit for the validity of the authority
- b. Exceeding the boundaries of the area where the authority applies; and/or
- c. Contrary to the provisions of laws and regulations.

Article 18 paragraph (2) government agencies and/or officials are categorized as mixing authority as referred to in Article 17 paragraph (2) letter b, if the decisions and/or actions taken:

- a. Outside the scope of the field or material authority granted; and/or
- b. Contrary to the purpose of the given authority.

Whereas in addition to the above provisions, Article 8 paragraph (2) of Law Number 30 of 2014 states "Government

Agencies and/or Officials in exercising their authority must be based on:

- a. Laws and regulations
- b. AUPB

This means that abuse of authority can occur because:

- Using authority is contrary to the law which contains the legal basis for the given authority.
- To exercise authority for purposes other than those expressly required by laws and regulations with such authority.
- Exceeding authority,
- Mixing authority and,
- Arbitrary.
- Decisions must be submitted to the parties named in the Decision.

The procedural aspect rests on three main foundations of administrative law, namely the rule of law principle, the principle of democracy, and the principle of instrumentalia. The principle of the rule of law in its main procedure relates to the protection of basic human rights, such as the occurrence of discriminatory actions in the implementation of government functions. Discriminatory actions under the principle of the rule of law are interpreted as an act of applying the law that is not evenly distributed in the administration of government. The principle of democracy in procedures is related to the principle of openness in the administration of government. The principle of openness obliges the government to actively provide information to the public about an application or a government action plan and obliges to provide an explanation to the public on the requested matter. Open government allows the participation of the community in decision making. In addition, the principle of openness requires the government to announce every government decision. Instrumental principles include the principle of efficiency (doelmatigheid: usability) and the principle of effectiveness (doeltreffendheid: results of use). If there is a procedural defect, it will have implications for abuse of authority if the use of that authority deviates or conflicts with a goal that has been stipulated in the legislation.

The substance aspect is related to the power of government which contains the authority to regulate and control people's lives, which is substantially limited.

That the use of authority is not as it should be, in this case the official uses his authority for other purposes deviating from the purpose that has been given to that authority.

Whereas the juridical defect related to the substantive aspect is the cancellation of government action, in this case the decision issued by the State Administrative Officer.

The General Principles of Good Governance (Algemene Beginselen Van Behoorlijk Bestuur), as regulated in Law Number 30 of 2014 concerning Government Administration, confirms in Article 10 paragraph (1) that the General Principles of Good Governance referred to in the Law This law includes:

- a. the principle of legal certainty,
- b. benefit principle,
- c. the principle of impartiality,
- d. principle of prudence,
- e. the principle of not abusing authority
- f. principle of openness,
- g. the principle of public interest, and
- h. good service principle

II. RESEARCH METHODS

This research will use the type of normative legal research. According to Terry Hutchinson (Terry Hutchinson, 2002:9), normative legal research is also called doctrinal research (Doctrinal Research). Doctrinal Research: Research which provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explains areas of difficulty and perhaps, predicts future development.

This is also in accordance with what was stated by Peter Mahmud Marzuki (Marzuki, P.M, 2007:35), that legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced.

This research will use the type of normative legal research, normative legal research is carried out to examine legal concepts related to the regulations governing the government actions carried out by the Central Maluku Regent regarding the issuance of Decree Number: Number: 141-458 of 2018 Regarding the Ratification of the Head of the Lilibooi State Government, West Leihitu District, December 20, 2018.

III. RESULTS AND DISCUSSION

1 Legality of the Central Maluku Regent's Government Actions in Issuing Decree Number: Number: 141-458 of 2018 concerning the Ratification of the Head of the Lilibooi State Government.

The land of Lilibooi in West Leihitu District, Central Maluku Regency is a territorial genealogical community unit that has territorial boundaries, authorized to regulate and manage the interests of the local community based on the rights of origin and local customs, located in Central Maluku Regency which is recognized and respected in the government system of the Unitary State of the Republic of Indonesia (See Article 1 letter g, Regional Regulation Number 3 of 2006). General Elucidation of Regional Regulation Number 3 of 2006, therefore, state autonomy as innate autonomy should be developed for the benefit of the people of the country, but that does not mean that the State will then be separated from the control of the Government, but remain under the Guidance and Supervision of the Government.

The land of Lilibooi, by itself is categorized as a country with the head of the state government (King) being a position held by a person based on the origin of the rightful lineage of Mata Rumah.

The right to be the Head of the State Government of the Household/Descendants who are entitled and cannot be transferred to another Eye of the House, unless mandated due to certain circumstances of the entitled Household/Descendants.

Related to the determination of the eyes of the house/descendants who are entitled to become the head of the state government in the land of Lilibooi according to the regulation of the state of Lilibooi Number 01 of 2017 concerning the determination of the eyes of the house/ the descendants who are entitled to be the head of the government of the land of Lilibooi, the descendants of Teon Sialana Lumatita are straight descendants of the late Tomasiwa Kastanya (Article 2 paragraph (2) of the Lilibooi State Regulation Number 1 of 2017).

That if based on the authority of the delegation owned by Saniri Negeri Lilibooi as regulated in the Regional Regulation of Central Maluku Regency Number 3 of 2006 concerning Procedures for Nomination, Election and Inauguration of the Head of the State Government Jo Regional Regulation of Central Maluku Regency Number 4 of 2006 concerning Guidelines for Structuring State Or Agency Saniri State Deliberation, then Saniri Negeri Lilibooi issued the Decree of Saniri Negeri Lilibooi Number: 1.a of 2017, Dated October 9, 2017 concerning the Appointment of the Head of Government of the State of Lilibooi, West Leihitu District, Central Maluku Regency after the Parentah House Eye Consultation.

Based on the determination of the Head of the Lilibooi State Government by Seniri Negeri Lilibooi, the Regent of Central Maluku based on his authority authorized the Head of the Lilibooi state government by issuing Decree Number: Number: 141-458 of 2018 concerning Ratification of the Head of the Lilibooi State Government, West Leihitu District, December 20 2018, And the Head of the Lilibooi State Government was inaugurated by the Regent, without confirming the title based on custom in

accordance with the provisions of Article 40 paragraph (1) of Central Maluku District Regulation Number 3 of 2006 concerning Procedures for Nomination, Election, and Inauguration of the Head of the State Government .

That in relation to this matter, the legal aspects of government actions will be analyzed which include aspects of authority, procedure, and substance or based on the formulation of Article 66 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, that "Decisions can only be annulled if there are defects:

- a. Authority;
- b. Procedure; and/or
- c. substance.

That the principle of legality is the main element in every government action. The principle of legality means that every government action must be based on applicable laws and regulations, and to test whether the object of dispute in the a quo case fulfills the legality aspect of government action, it will be analyzed using aspects of authority, procedure, and substance as described below. :

1. Aspect of authority

Every government action is required to rely on legitimate authority. Authority as the basis for implementing government functions and is carried out based on applicable laws and regulations.

This authority is obtained through three sources, namely attribution, delegation and mandate. Attribution authority is usually outlined through the division of state power or determined by law, delegation and mandate authority are powers that come from delegation.

Regarding attribution, delegation, and mandate can be explained as follows: Attribution. Attributes; toekening van en bestuurs bevoegheiddodan or een wetgever aan een bestuursorgaan. This means that, attribution is the granting of government authority by lawmakers to government organs. Another formulation says that attribution is the formation of certain authorities and their giving to certain organs. The establishment of authority and distribution of authority are primarily stipulated in the Constitution and the Constitution.

Regarding the delegation, it was stated that "Delegatie; overdracht van een bevoegheid van het eene bestuursorgaan aan een ander. This means that delegation is the delegation of government authority from one government organ to another. Delegation is defined as the transfer of authority (to make a "besluit") by a government official (TUN official) to another party and that authority is the responsibility of the other party. Regarding the mandate, it is formulated as follows, namely "een bestuursorgaan laat zinj bevoegheid names hem uitoefeen door een ander, (mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf) Mandate is a delegation of authority to subordinates. The delegation intends to give authority to subordinates to make decisions a.n TUN officials who give the mandate. The decision is the decision of the TUN Official who gave the mandate. Thus, accountability and responsibility remain with the giver of the mandate. For a mandate, there is no need for statutory provisions.

Based on the source of authority described above, the Regent of Central Maluku Regency in accordance with Regional Regulation Number 03 of 2006 concerning Procedures for Nomination, Election, and Inauguration of Heads of State Governments has delegation authority to issue Decisions on Ratification of Heads of State Governments in Central Maluku Regency including Heads of Government Lilibooi Country.

Regional Regulation Number 03 of 2006 concerning Procedures for Nomination, Election, and Inauguration of Heads of State Governments lays the foundation for realizing legal certainty for countries in Central Maluku Regency including Lilibooi State. In the Regional Regulation of Central Maluku Regency Number 3 of 2006 concerning Procedures for Nomination, Election, and Inauguration of the Head of the State Government, confirms the authority of the Regent of Central Maluku, as stated in Article 37, Article 38 paragraph (1), Article 39, Article 40 paragraph (1) as follows:

Article 37 The decision of the state Saniri or BPN regarding the stipulation of the Head of the State/Administrative Government is reported to the Regent through the Camat no later than 7 (seven) days after its stipulation.

Article 38 paragraph (1) The elected Head of State/Administrative Government is approved by the Regent by issuing a Regent Decree concerning the ratification of the elected Head of State/Administrative Government.

Article 39: The inauguration of the Head of State/Administrative Government is carried out by the Regent or other appointed official.

Article 40 paragraph (1) Prior to the inauguration of the head of the State Government by the Regent or other appointed official, a Title Inauguration is carried out based on local customs and customary law.

Whereas in accordance with the provisions as stated above, the Maluku Regent has the authority to ratify and inaugurate the Head of the Lilibooi State Government, and prior to inaugurating the Head of the State Government, an inauguration must be carried out based on customs and local customary law. Confirmation prior to the inauguration of the Head of the Lilibooi State Government, so is there an abuse of authority in the process of inaugurating the head of the Lilibooi State Government? Against this will be analyzed in the aspect of the procedure.

Based on the description above, there was no abuse of authority by the Regent of Central Maluku in the form of using authority not contrary to the Regional Regulations of the Central Maluku district which became the legal basis for the authority given, so that it had fulfilled the aspect of authority as one of the legal aspects of government action.

2. Procedure Aspect

The general principle of procedure rests on three main foundations of administrative law, namely the principle of the rule of law, the principle of democracy, and the principle of instrumentalia.

The principle of the rule of law in its main procedure relates to the protection of basic human rights, such as the occurrence of discriminatory actions in the implementation of government functions. Discriminatory actions under the principle of the rule of law are interpreted as an act of applying the law that is not evenly distributed in the administration of government.

The principle of democracy in procedures is related to the principle of openness in the administration of government. The principle of openness obliges the government to actively provide information to the public about an application or a government action plan and obliges to provide an explanation to the public on the requested matter. Open government allows the participation of the community in decision making.

In addition, the principle of openness requires the government to announce every government decision. Instrumental principles include the principle of efficiency (doelmatigheid: usability) and the principle of effectiveness (doeltreffendheid: results of use).

That in the event of a procedure defect, it will have implications for abuse of authority if the use of that authority deviates or contradicts an objective set out in the legislation.

That the conditions for the validity of the decision are in accordance with Article 52 paragraph (1) and paragraph (2) of Law Number 30 of 2014 concerning Government Administration.

Article 52 paragraph (1) The conditions for the validity of the decision include:

- a. Determined by the competent authority;
- b. Made according to procedures; and
- c. Substance that corresponds to the object of the decision.

Article 52 paragraph (2) The validity of the decision as referred to in paragraph (1) is based on the provisions of the legislation and AUPB.

The government action taken by the Central Maluku Regent by issuing a Decision Letter Number: Number: 141-458 of 2018 concerning the Ratification of the Head of the Lilibooi State Government, West Leihitu District, December 20, 2018. Does not conflict with the applicable laws and regulations, namely: Regulations Region of Central Maluku Regency Number 03 of 2006 concerning Procedures for Nomination, Election, and Inauguration of the Head of State Government. Jo Lilibooi State Regulation Number 01 of 2017 concerning Determination of Eyes of the House/Descendants Who are Entitled to be Head of the Lilibooi State Government.

In connection with the inauguration of the Head of the Lilibooi State Government, Hena Upu (Lord of the Country) had to carry out an Inauguration of Titles, but this was not done. Hean Upu (Lord of the Country) did not inaugurate his title, because Hena Upu (Lord of the Country) was also running to become the Head of the State Government (Upu Latu), so Hena Upu (Lord of the Country) was not willing to carry out the Inauguration of the Title according to customs and law. custom. One of the functions of Hena Upu (Lord of the Country) is to confirm Upu Lalu (King), so that Matarumah Hena Upu (Lord of the Country) in every country in Central Maluku cannot become Upu Latu (King), because the right of the matarumah is to confirm Upu Lalu (King). King).

The Regent of Central Maluku in order to fulfill a public service for the people of the State of Lilibooi, can take action in the form of discretionary authority to carry out the Inauguration of the Head of the Government of the State of Lilibooi, without being preceded by an Inauguration of Title by Hena Upu (Tuan Negeri). Therefore. This is because discretion as affirmed in Article 1 point 9 of Law Number 30 of 2014 affirms "Discretion is a decision and/or action that is determined and/or carried out by a government official to overcome concrete problems faced in the administration of government in terms of laws and regulations that giving choices, not regulating, incomplete or unclear, and/or government stagnation". Thus, the Central Maluku Regent's Government Action has fulfilled the procedural aspect as one of the legal aspects of government action.

3. Aspect Substance

The substance aspect is related to the power of government which contains the authority to regulate and control people's lives, which is substantially limited.

Substance defects are related to the questions "what" and "for what" "What" relates to arbitrary actions (kennelijk onredelijk); a substantial defect regarding "what for" is an act of abuse of authority (detournement de pouvoir) by the government. "

That the use of authority is not as it should be, in this case the official uses his authority for other purposes deviating from the purpose that has been given to that authority.

Whereas the juridical defect related to the substantive aspect is the cancellation of government action, in this case the Decree issued by the Regent of Central Maluku. if it is contrary to the applicable laws and regulations.

That the substance aspect has been fulfilled, due to the issuance of the Decree of the Central Maluku Regent Number: Number: 141-458 of 2018 concerning the Ratification of the Head of the Lilibooi State Government, there is no substantial principal error, which is contrary to statutory regulations as the juridical basis for the implementation of the authority of the Central Maluku Regent.

4. Aspects of Algemene Beginselen Van Behoorlijk Bestuur (General Principles of Good Governance)

The general principles of good governance as regulated in Law Number 30 of 2014 concerning Government Administration, confirms in Article 10 paragraph (1) that the General Principles of Good Governance referred to in this Law include:

- a. the principle of legal certainty,
- b. benefit principle,
- c. the principle of impartiality,
- d. principle of prudence,

- e. the principle of not abusing authority
- f. principle of openness,
- g. the principle of public interest, and
- h. the principle of good service.

The principle of legal certainty is a principle in a state of law that prioritizes the basis of legislation, propriety, constancy, and justice in every policy of government administration.

The principle of expediency is the benefit that must be considered in a balanced manner between: (1) the interests of one individual and the interests of other individuals; (2) individual interests with society; (3) the interests of citizens and foreign communities; (4) the interests of one community group and the interests of other community groups; (5) the interests of the government with the citizens of the community; (6) the interests of the present generation and the interests of future generations; (7) the interests of humans and their ecosystems; (8) the interests of men and women.

The principle of impartiality is the principle that requires Government Agencies and/or Officials in determining and/or making decisions and/or actions taking into account the interests of the parties as a whole and not discriminatory.

The principle of accuracy is a principle which implies that a decision and/or action must be based on complete information and documents to support the legality of the determination and/or implementation of the decision and/or action so that the decision and/or action concerned is carefully prepared before the decision and/or action is taken. or the action is determined and/or performed.

The principle of not abusing authority is a principle that requires every Government Agency or Official not to use its authority for personal or other interests and not in accordance with the purpose of granting such authority not to exceed, not abuse, and/or not to mix authority.

The principle of openness is a principle that serves the community to gain access and obtain correct, honest and non-discriminatory information in the administration of government while still paying attention to the protection of personal, group and state secrets.

The principle of public interest is the principle that prioritizes the welfare and public benefit in an aspirational, accommodative, selective and non-discriminatory manner.

The principle of good service is the principle of providing timely services, clear procedures and costs, in accordance with service standards and statutory provisions.

That the issuance of the Decree of the Regent of Central Maluku does not contradict the general principles of good governance (Algemene Beginselen Van Behoorlijk Bestuur) as mentioned above.

2. Legal Consequences for the Action of the Central Maluku Regent to Inaugurate the Head of the Lilibooi State Government before the Inauguration of Titles Based on Customs and Traditions.

Government actions are unilateral actions of government officials and therefore may have defects in the form of bedrog (fraud), dwang (coercion, and dwaling (mistake). In addition, every government action must meet the legal aspects of government action so that it does not contain juridical defects so that it can be canceled .

The authority to determine, ratify, inaugurate, and inaugurate titles in accordance with local customs and customary law of the Head of State Government in Central Maluku Regency is based on Central Maluku Regency Regulation Number 03 of 2006 concerning Procedures for Nomination, Election, and Inauguration of the Head of State Government.

Lilobooi Country is one of the Indigenous Law Community Alliances or what is called the State in Central Maluku Regency, has determined, ratified, Inaugurated the Head of the Lilibooi State Government in accordance with Central Maluku Regency Regulation Number 03 of 2006 concerning Procedures for Nomination, Election, and Inauguration of Head of Government Jo State Regulation of Lilibooi State Regulation Number 01 of 2017 concerning Determination of the Eye of the House/Descendants Who are Entitled to Be the Head of the Lilibooi State Government.

In the implementation of the authority of both the State Saniri of Leliboooi, and the Regent of Central Maluku Regency, it has been carried out starting with the stipulation of the Head of the Lilibooi State Government by the State Saniri based on the stipulation of the Head of State Government carried out by Matarumah parentah in the State of Lilibooi. Then proceed with the Ratification and Inauguration of the Head of the State Government by the Regent of Central Maluku Regency.

The provisions of Article 40 paragraph (1) of the Regional Regulation of Central Maluku Regency Number 03 of 2006 confirms "Prior to the inauguration of the head of the State Government by the Regent or other appointed official", and this is not done by the Regent of Central Maluku Regency. Therefore, it raises legal problems related to the legality of government actions that must be fulfilled in the implementation of government functions.

Regarding this matter, it will be analyzed from the perspective of administrative law, whether the legal reason is that the title inauguration is not carried out in accordance with the provisions of Article 40 paragraph (1) of Central Maluku Regency Regulation Number 03 of 2006.

In Central Maluku district, each country is formed by the oath of the ancestors related to which eye of the house should be the Head of the State Government called Upu latu (King), which eye of the house is Hena Upau (Lord of the Country) in each country in Central Maluku, so that there is no There may be a violation of the ancestral oath, and if it is violated, the customary oath is known in the countries in Central Maluku, namely: "SEI HALE HATU, HATU LISA PEI, SEI LESI SOU, SOU LESI EI" (SAPA BALE BATU, BATU GEPE DIA , WHO BREACHES AN Oath, KILL HIM, OR ANYONE TRYING TO RETURN A STONE, THEN THE STONE WILL EACH HIM, ANYONE WHO BREACHES THE oath, an oath will KILL HIM).

In every country in Central Maluku, each eye of the house knows very well their respective positions. Who is Upu Latu (King), Who is Hena Upu (Tuang Negeri) and others with their respective functions. This is a promise and an oath since the ancestors in every land.

That in accordance with customs and customary law in Central Maluku, the person entitled to carry out the Inauguration of the Title to become the Head of the State Government (King) is "HENA UPU" (TUAN NEGERI). The legal question is in the land of Lilibooi, Which Matarumah has the right to do this?

In the land of Lilibooi, the person entitled to become the head of the government of the state of Lilibooi (Upu Latu/Raja) is Matarumah Teon Sialana Lumatita, a straight descendant of the late Tomasiwa Kastanya, while the person who became Hena Upu (Lord of the Country) is the matriarch of Hetharion.

In the process of inauguration of the Head of State Government (Upu Latu/Raja) by the Regent of Central Maluku, Hena Upu (Tuan Negeri) was not willing to carry out the Inauguration of the Title. However, the inauguration of the Head of State Government is still carried out. This is because in the context of fulfilling a public service, in this case public services for the community in the State of Lilibooi, it can take action within its discretionary authority to carry out the Inauguration of the Head of the Government of the State of Lilibooi, even though it is contrary to the provisions of Article 40 paragraph (1) Regional Regulation of Central Maluku Regency Number 03 of 2006..

That discretion according to the provisions of Article 1 point 9 of Law Number 30 of 2014 affirms "Discretion is a decision and/or action that is determined and/or carried out by a Government Official to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, unregulated, incomplete or unclear, and/or government stagnation".

The provisions of Article 22 of Law Number 30 of 2014 confirms:

Article 22 paragraph (1) Discretion can only be exercised by an authorized Government Official. Paragraph (2) Every use of Government Official's Discretion aims to:

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

Article 24 states that "Government officials who use discretion must meet the following requirements":

1. in accordance with the purposes of the Discretion as referred to in Article 22 paragraph (2);
2. does not conflict with the provisions of laws and regulations;
3. in accordance with AUPB;
4. based on objective reasons;
5. does not cause a Conflict of Interest; and
6. done in good faith.

Based on the provisions in Law Number 30 of 2014 as stated, it shows that as a result of Hena Upu (Tuan Negeri) not being ready for the Inauguration of Titles before the Inauguration was carried out by the Regent of Central Maluku, in the context of public services running well in the land of lilibooi, the Regent of Central Maluku was justified in using discretion. to conduct the Inauguration of the Head of the Lilibooi State Government.

The legal consequences of the Government Act of the Central Maluku Regent who carried out the Inauguration before the Inauguration of the Title by Hena Upu (Tuang Negeri), the government action remained valid and could not be canceled.

IV. CONCLUSIONS AND SUGGESTIONS

CONCLUSION

1. Government actions taken by the Central Maluku Regent by issuing Decree Number: 141-458 of 2018 concerning the Ratification of the Head of the Lilibooi State Government, Leihitu Barat District, December 20, 2018 have fulfilled the legality aspects of government actions which include authority, procedure, and substance as well as other aspects Algemene Beginselen Van Behoorlijk Bestuur (General Principles of Good Governance).
2. Legal Consequences Government action taken by the Regent of Central Maluku by inaugurating the Head of the Lilibooi State Government prior to the Inauguration of Titles based on customs and customary law, is justified by law and cannot be canceled, because the government action is a discretionary authority for the creation of public services in the land of Lilibooi.

SUGGESTION

1. Government Officials in issuing Government Actions should pay attention to the legality of government actions, aspects of the legality of government actions which include authority, procedure, and substance as well as aspects of Algemene Beginselen Van Behoorlijk Bestuur (General Principles of Good Governance).
2. Government officials at the State level should understand the functions and authorities in carrying out these duties and authorities, so as not to cause legal problems in the administration of government in countries in Central Maluku.

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