

Impeachment Resulting from the Head of the Public Trust Crisis

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Abstract- Impeachment Regional Head, in the case of impeachment regional heads to dialakukan two mechanisms, namely, the First Regional Head dismissed the proposals or decisions of Parliament and approved by the President, the Second, dismissal of the Head of Region by the President without any proposal or decision of Parliament, If the Regional Head expected has done a fraud then, the investigation must be held with the approval of the President. Dismissal of Regional Heads can be implemented only based on laws and regulations imposed without interest. Dismissal on the proposal of Parliament in the event of a crisis of confidence then use the right of Parliament to respond to the questionnaire, the use of the right of inquiry after approval by the plenary session of 2/3 of the members present, Based on the Council decision, the President dismiss the Regional Head and Deputy Regional Head over Parliament's proposal, that the Regional Head and Deputy Regional Head dismissed by the President, for committing treason and / other actions that could divide Rnepublik Unitary State of Indonesia represented by the verdict "a court that has obtained permanent legal force.

Index Terms— Impeachment, Head of public, trust crisis

I. INTRODUCTION

Impeachment Regional Head is dismissing Regional Head for reasons causes beyond resignation and remains incapacitated, impeachment occurs because the Local Government no longer has the confidence of public, a process carried out by Parliament through the use of the right of interpellation to request the authority of the Executive regarding policies, and are usually followed by right questionnaire to conduct investigations related to the alleged policies violated the criminal law.

If the committee concludes that there is a serious criminal offense in the policy, then the results of the investigation disampakan in a plenary meeting. If the plenary session to decide impeachment inquiry committee on the basis of the investigation, the decision disampakan to the Supreme Court to be tested legally, the answer was delivered 30 days after the

Parliament, if the Supreme Court judge if impeachment was not a strong legal basis, then the impeachment proposal was rejected. If accepted Parliament should hold a plenary session to decide impeachment back, then hasilnya submitted to the Minister of Internal Affairs through the Governor. Here is who decides whether or Regional Head / Deputy Head dismissed, the answer is known to a maximum of 30 days since delivered to the Minister of Internal Affairs. The Supreme Court shall examine, hear and decide the opinion of the Parliament, after the Parliament accepted the request of the Supreme Court and the decision is final.

In principle, the dismissal and the Regional Head / Deputy Head can be done in his term or at the end of his term. But in this case needs to be assessed is if a Regional Head dismissed before his term is completed, because if the Regional Head dismissed if it meets grounds in article 29 of Law 32 of 2004. In terms Pemberhentian Regional Head diatur in Article 29 paragraph (1) of the Constitution Law No. 32 of 2004. in this case Dismissal of Regional Head regulated in Article 29 paragraph (1) of Law No. 32 of 2004. that the Regional Head and Deputy Head of Regional or stopped because:

- Die
- ownrequest
- dismissed because of legal action.

In this discussion the question if, a Regional Head or Deputy Head dismissed, as stipulated in Law No. 32 of 2004 Article 29 paragraph (2) of Regional Head and / or Deputy Regional Head referred to in paragraph (1) letter C was dismissed because :

- Ending his tenure and has been inducted new officer
- Unable to melllaksanaan tasks berkellanjutan or remains absent for six consecutive months.
- No longer qualify as Regional Head and / or in the Deputy head of the Regions.
- Declared in violation of the oath and the promise of the post of Regional Head and / or Deputy Regional Head.

- e. Do not carry out the obligations of Regional Head and / or Deputy Regional Head.
- f. Violates the prohibition for Regional Head and / or Deputy Regional Head

If one of the elements contained in Article 29 of Law 32 of 2004 is violated by the Regional Head, then in this case the Regional Head has the authority to propose the dismissal of regional heads both at provincial and district level and the city. As stipulated in Law No. 32 of 2004 Article 42 paragraph (1) letter of appointment and dismissal d.mengusulkan Regional Head / Deputy Head of the President through the Secretary of the Interior for Parliament in the development of the Province and to the Minister of Home Affairs through the Governor for Regency / City.

Methods

This type of research is the study of normative law, namely the legal research process undertaken to produce arguments, theories, new concepts as prescriptions to address the issue of the law, which is done by reviewing and analyzing the statutory provisions and regulations, court decisions and other legal materials. The expected response in the study of law as a result of the analysis is right, Appropriate, or wrong. Thus it can be said that the results obtained in the study of law already contains values. Normative legal research is a research-based analysis of the legal norms.

In the context of legal research, further Abdul Kadir Muhammad found normative legal research is legal research that examines the written laws of the various aspects: the theoretical aspects, consistency, overview and chapter by chapter, the formalities and the power of reviewing a law and a common language by chapter, the formalities and the binding force of a law and the legal language used, but did not examine the aspect of applied or implementation.

In accordance with the objectives to be achieved, then the method in the design of this legal research using four different approaches. The first mentioned approach, the conceptual approach (Conceptual Approach), which is the approach taken by doing a search for views and doctrines that developed in the jurisprudence derived from paraahli opinion or theory, especially concerning the understanding of decency. Second, the approach legislation (Statute Approach) is done with verification, classification of legal products in the form of legislation which is expected to draw the basic principles of the substance of the legal issues in this case, an understanding of impeachment. The third approach to history (Historical Approach) is done by reviewing and analyzing the process of formation of legislation that contains or regulate the legal

issues which became the object of study and analysis in the study of law

II. RESULTS AND DISCUSSION

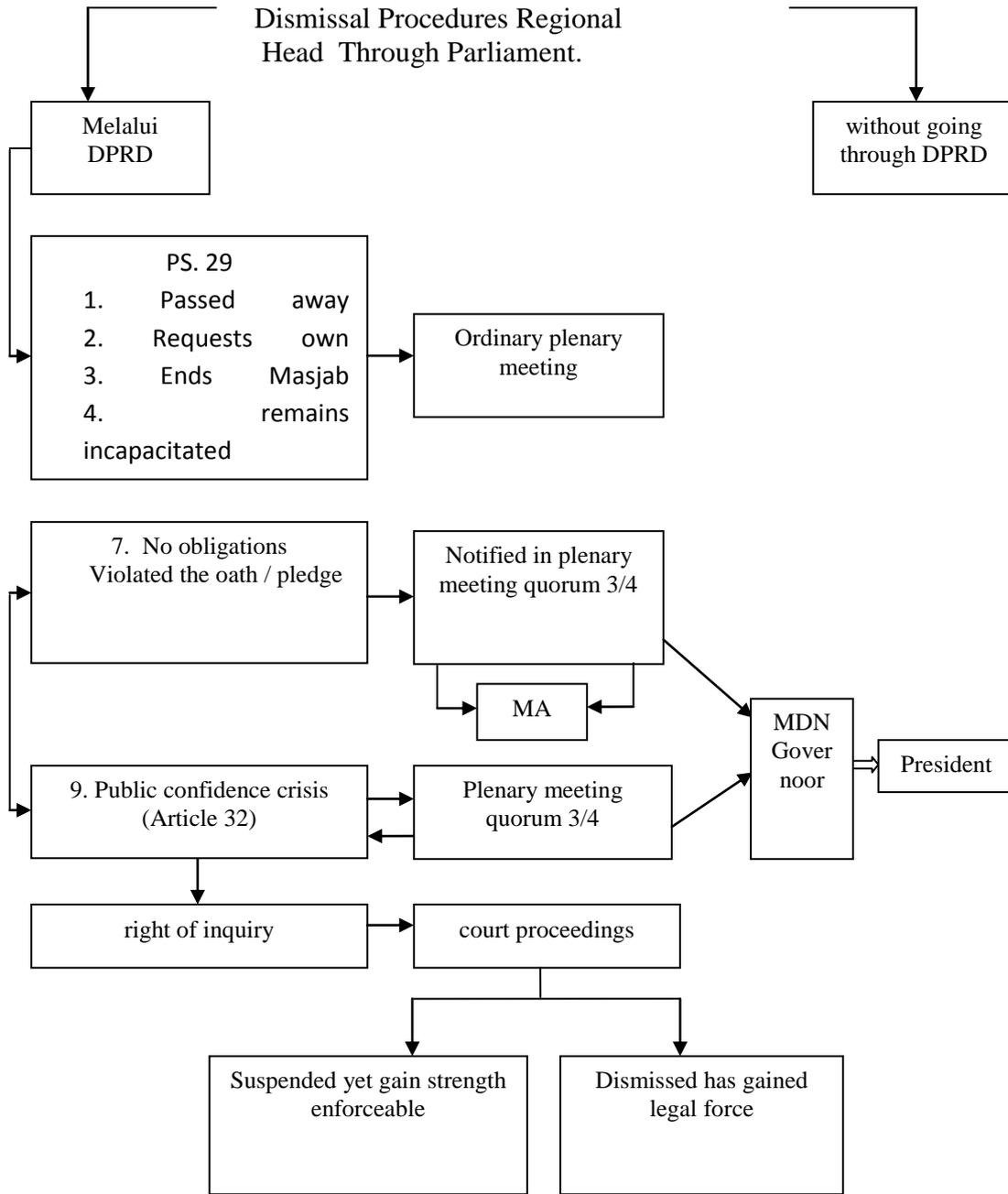
Itself Impeachment

Impeachment is dismissing Regional Head for reasons beyond the reason of resignation and remains incapacitated. Impeachment occurs because Head Daerah no longer has the confidence of public, the process is carried out by Parliament using inrerpelasi right to request the executive authority regarding a policy, and are usually followed by the right of inquiry to conduct investigations related to the alleged policies violated the criminal law.

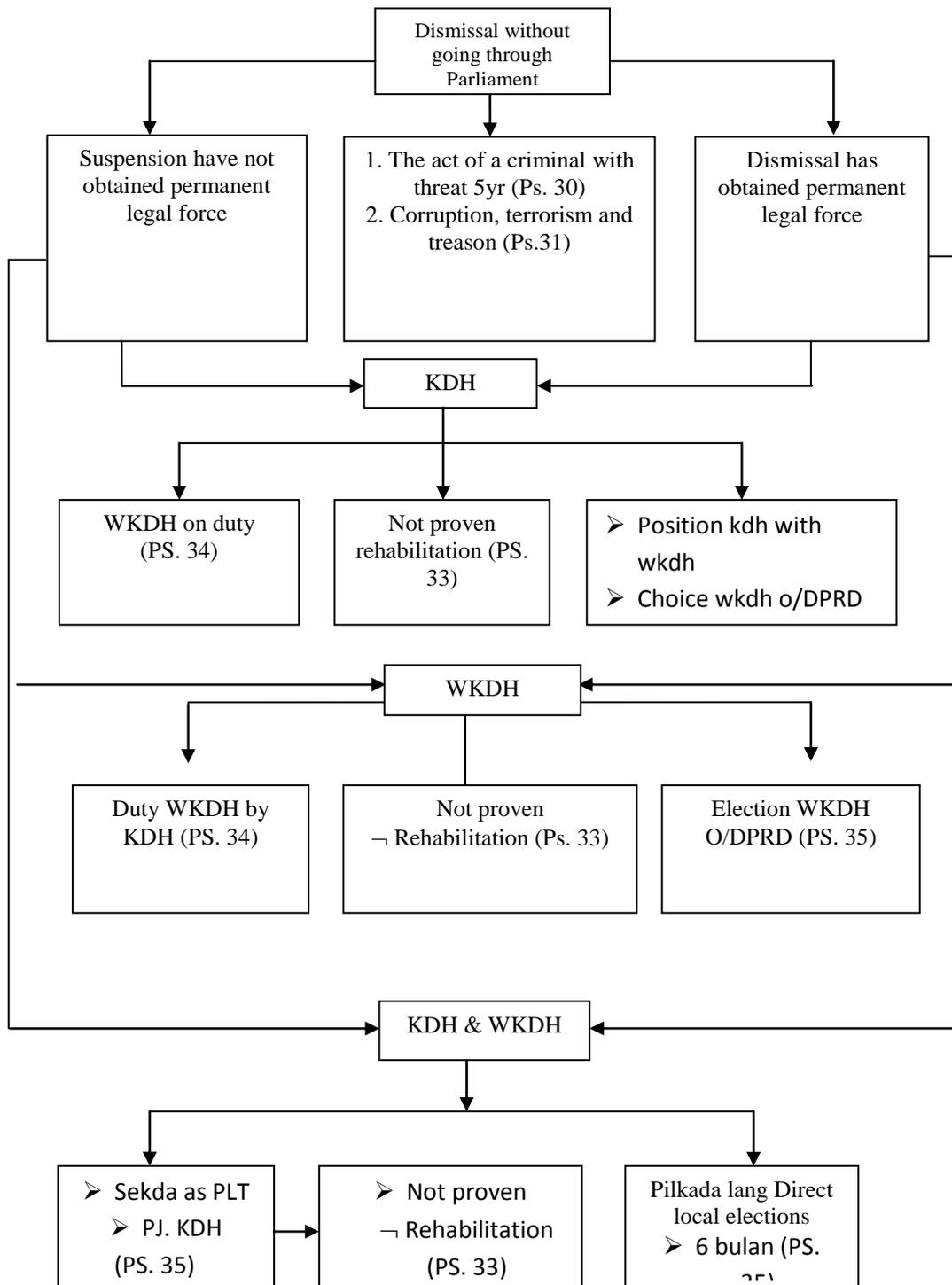
If the committee concludes that there is a serious criminal offense in the policy of the investigations presented in the plenary session. If the plenary session to decide impeachment on the basis of the committee's investigation, then submitted to the Supreme Court's decision to be tested legally. Jawabanya delivered 30 days after parliament is delivered, if the Supreme Court judge impeachment was rejected, accepted that parliament should hold a plenary session to decide impeachment back later the results are submitted to the Minister of Internal Affairs through the Governor.

Here are deciding whether the Regional Head / Deputy Head can be dismissed or not, the answer can be known to a maximum of 30 days since delivered to the Minister of Internal Affairs. The Supreme Court shall examine, and decide upon the opinion of the Parliament. Once the request is received by the Supreme Court of parliament, and the Supreme Court ruling is final.

Terms and dismissal procedure according to the Head of Regional Law No. 32 of 2004, the dismissal of the Head of Region because died, at his own request or dismissed. Article 29 paragraph (2) of Law No. 32 of 2004 specifies that the Regional Head dismissed because:
a. Ended tenure and has been inducted new officers; The sense is that, officials of the Regional Head constrained by the periodicity of office which is 5 (five) years and in case of the Election which was later elected Regional Head / Deputy Head of the new, then based on the proposal of the Commission Region, letter by decision of the Plenary Session of Parliament and approved by President through the Minister of Home Affairs, the Governor in Council plenary siding induct partner Regional Head / Deputy Head of Region since SK is read and executed Inauguration, the Regional Head of time automatically has ended his term, due to have been inducted new officers.



Dismissal Procedures Regional Head Without Through Parliament.



III. CONCLUSION

Based on the above it can be concluded that the implications of the proposed Parliament against the dismissal of the Head of Region, which causes a local chief was dismissed in his tenure, of course, is inseparable from the authority is Parliament that stipulated in the Act and Regulations 32 of 2004 pasal 42 paragraph (1) huruf d "propose the appointment and dismissal of the head / deputy head of the region to the President through the Minister of State for Provincial Parliament and to the State through Governor

Menteridalam for regency / city" are given the authority to act, of course, have an impact on bemberhentian head region. Based on the contents pasal, that the proposal to dismiss the head of the region decided again in a plenary meeting. Parliament in article 43 of Law No. 32 of 2004 has been set regarding the rights of Parliament, namely: interpellation; Right of inquiry; Opinion.

In response to the proposed dismissal of the Head of the Regional Council to use the right of inquiry which is carried out after the interpellation submitted for approval by the plenary session of Parliament that is attended by at least ¾ of

the number of members of Parliament and approval taken at least 2/3 of the number of members of parliament were present.

As an element of local government, Parliament also has a legislative function, budgeting and supervision. Duties and oversight of Parliament specifically listed in Act No. 32 of 2004 Article 24, paragraph 1C, Monitoring aims to develop a democracy guarantee the representation of the people and the region in carrying out its duties and authorities, as well as to develop a mechanism of checks and balances between the legislature and the executive in order justice and welfare.

IV. RECOMMENDATION

1. It should be in terms of Dismissal of Regional Head should the main priority is the rule of law.

2. Decision-making plenary session of Parliament on the dismissal of the Head of Region, must comply with the applicable legal mechanisms.

3. Should the Supreme Court ruling should be a reference to the dismissal of the Head of Region.

REFERENCES

- [1] Asshiddiqie Jimly, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi, Jakarta, 2006.
- [2] Fadjar Abdul, Mukti, *Hukum Konstitusi dan Mahkamah Konstitusi*, 2006, Jakarta: Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi RI.
- [3] Ismawan Indra, *Money Politics pengaruh uang dalam pilkada*, Media Pressindo Yogyakarta, Hal 31.
- [4] Marijan Kacung, *Resiko Politik, Biaya Ekonomi dan Akuntabilitas dan Demokrasi Lokal*, Jakarta, 2007.
- [5] Sujatmoko Emanuel, *Pemilihan Kepala Daerah Secara Langsung*, Yuridika, vol. 21 No. 4, Juli-Agustus 2006, Surabaya.
- [6] Undang-undang No. 37 tahun 2009 tentang MPR, DPR, DPRD.
- [7] Undang-undang No. 32 Tahun 2004 tentang pokok-pokok pemerintahan di daerah.
PP No 6 Tahun 2005 tentang Pemilihan, Pengesahan, Pengangkatan dan Pemberhentian Kepala Daerah dan Wakil Kepala daerah.