

## RINGKASAN

PEMBERHENTIAN KEPALA DAERAH  
BERDASARKAN UNDANG-UNDANG NOMOR 32 TAHUN 2004  
TENTANG PEMERINTAHAN DAERAH

Imam Ropii

Berdasarkan pada pasal 7 A Undang Undang Dasar 1945 Amandemen, Presiden dan Wakil Presiden dapat diberhentikan dalam masa jabatannya oleh MPR atas usul DPR, baik apabila terbukti telah melakukan pelanggaran hukum berupa pengkhianatan terhadap negara, korupsi, penyuapan, tindak pidana berat lainnya, atau perbuatan tercela maupun apabila terbukti tidak lagi memenuhi syarat sebagai Presiden dan/atau Wakil Presiden.

Presiden sebagai kepala Pemerintah yang proses pemilihannya melibatkan seluruh warga negara yang memenuhi syarat oleh UUD dimungkinkan untuk diberhentikan dalam masa jabatannya jika memenuhi syarat. Ketentuan ini juga membawa implikasi pada Kepala Daerah sebagai penyelenggara pemerintah daerah yaitu dapat diberhentikan dalam masa jabatannya apabila memenuhi syarat untuk itu. Dalam UU No. 32/2004 pengaturan tentang Pemerintahan Daerah telah berhasil dilakukan dengan telah disyakkannya Undang-Undang Nomor 32 tahun 2004 tentang Pemerintahan Daerah.

Salah satu pengaturan yang sangat berbeda antara UU No. 32/2004 dengan pengaturan Pemerintahan Daerah masa sebelumnya adalah tentang pemberhentian Kepala Daerah. Pada prinsipnya pemberhentian Kepala Daerah dan/atau Wakil Kepala Daerah dapat dilakukan pada masa jabatannya dan pada akhir masa jabatan.

Pemberhentian Kepala Daerah dan/atau Wakil Kepala Daerah dari segi prosesnya dapat dilakukan dalam dua model. Pertama, pemberhentian Kepala Daerah dan/atau Wakil Kepala Daerah yang didasarkan atas usul Dewan Perwakilan Rakyat. Pemberhentian atas usul DPRD ini dibagi dalam dua kelompok alasan. Pertama, karena alasan berakhir masa jabatannya dan telah dilantik pejabat yang baru dan karena alasan karena tidak dapat melaksanakan tugas secara berkelanjutan atau berhalangan tetap secara berturut-turut selama 6 bulan (pasal. 29 ayat (2) adan b.). Pemberhentian karena alasan ini diusulkan DPRD kepada Presiden. Kedua, pemberhentian Kepala Daerah dan/atau Wakil Kepala Daerah karena alasan : a) tidak lagi memenuhi syarat sebagai Kepala Daerah dan atau Wakil Kepala Daerah ; b) dinyatakan melanggar sumpah/janji jabatan Kepala Daerah dan/atau Wakil Kepala daerah;c) tidak melaksanakan kewajiban Kepala Daerah dan/atau Wakil Kepala Daerah; dan d) melanggar larangan bagi Kepala Daerah dan/atau Wakil Kepala Daerah. Pemberhentian karena alasan ini diputuskan dalam Rapat Paripurna DPRD berupa "pendapat DPRD" untuk diajukan ke Mahkamah Agung guna diperiksa, diadili dan diputuskan.

Kedua, pemberhentian Kepala Daerah dan/atau Wakil Kepala Daerah tanpa melalui usulan DPRD. Pemberhentian model ini dilakukan secara langsung oleh Presiden dengan dua sifat. Pertama pemberhentian sementara. Pemberhentian sementara dilakukan langsung oleh Presiden karena alasan : a) apabila dinyatakan

melakukan tindak pidana kejahatan yang diancam dengan pidana penjara paling singkat 5 tahun atau lebih berdasarkan putusan pengadilan (sesuai dengan penjelasan pasal ini, pengadilan yang dimaksud adalah pengadilan pertama/pengadilan negeri). b) karena diduga melakukan tindak pidana terorisme, makar dan/atau tindak pidana terhadap keamanan negara. Kedua, pemberhentian. Pemberhentian dilakukan oleh Presiden tanpa melalui usulan DPRD karena alasan : a) terbukti melakukan tindak pidana yang diancam dengan pidana penjara paling singkat 5 tahun atau lebih berdasarkan keputusan pengadilan yang telah memiliki kekuatan hukum tetap; b) terbukti melakukan tindak pidana terorisme, makar dan/atau tindak pidana terhadap keamanan negara.

Pemberhentian Kepala Daerah dan atau Wakil Kepala Daerah yang muat dalam undang-undang tentang Pemerintahan Daerah ini lebih mengedepankan mekanisme hukum dari pada mekanisme politik melalui pertanggungjawaban kebijakan. Pemberhentian dengan mekanisme hukum melalui proses pengadilan merupakan mekanisme yang lebih adil dan transparan daripada mekanisme politik melalui DPRD.

Dalam mekanisme pemberhentian Kepala Daerah dan atau Wakil Kepala Daerah, seperti halnya dalam undang-undang tentang Pemerintahan Daerah sebelumnya, hegemoni Presiden masih sangat besar. Hal ini nampak baik mengenai pengesahan calon Kepala Daerah dan Wakilnya maupun proses pelantikan serta proses pengesahan dalam pemberhentian Kepala daerah dan atau Wakil Kepala daerah.

Mengingat proses pemilihan dan pengesahan serta pemberhentian Kepala Daerah dan atau Wakilnya di daerah-daerah sudah mendekati untuk dilaksanakan mengingat masa jabatannya yang hampir habis, maka pembentukan Peraturan Pemerintah yang mengatur tentang tata cara pelaksanaan hal tersebut merupakan kebutuhan yang tidak dapat ditunda-tunda lagi.

**SUMMARY**  
**DISMISSAL OF REGIONAL HEAD**  
**BASED ON LAW NO. 32 YEAR 2004**  
**OF REGIONAL GOVERNMENT**  
**IMAM ROPII**

Based on article 7 A of Basic Law 1945 Amendment, President and Vice President are able to be dismissed from their position by MPR upon the suggestion of DPR, on due course have been conducted a Law Offence such as for being unfaithful to their nation, Corrupt, bribery, serious criminal offence, or other improper attitude even if they are proved improper to be a President and/or Vice President.

President as Government Head whom the election process have involved all citizen who are considered qualify by the Basic Law (UUD) is possible to be dismissed in his ruling period if he is considered improper. This provision also has an impact to Regional Head as the regional government which is he can be dismissed during his ruling period if he is considered so. According to UU No. 32/2004 the arrangement on Regional Government has been successfully approved by the legalizing of Law No. 32 year 2004 about Regional Government.

One of the diversity in arrangement between Law No. 32/2004 with the Arrangement of Regional Government on previous era is on the dismissal of Head of Regional Government. In principle, the dismissal of Regional Head and/or Vice Regional Head shall be conducted during their ruling period or at the end of their period.

The Dismissal of Regional Head and /or Vice Regional Head according to its procedures can be conducted in two models. First, the dismissal of Regional Head and/or Vice Regional Head based on the suggestion of Legislative Assembly (DPR). This kind of dismissal by Province Legislative Assembly is divided in two reasons. First, due to the ruling period of previous Regional Head has ended and the new Regional Head has been elected, also due to the reason that he is considered unable to continue his duty as a Regional Head and is not present for 6 months (Article 29 verse (2) a and b). This kind of Dismissal is suggested by Regional Legislative Assembly (DPRD) to the President. Second, the dismissal of Regional Head and/or Vice Regional Head caused by : a)having been considered as no longer qualify for being a Regional Head and/or Vice Regional Head; b) having been stated to have offence the sworn/oath as Regional Head or Vice Regional Head; c) does not conduct his obligation as Regional Head and/or Vice Regional Head; and d) trespassing the prohibited for Regional Head and/or Vice Regional Head. Dismissal to the above reasons shall be decided in Final Meeting of Regional Legislative Assembly (DPRD) in the form of " Regional Legislative Assembly opinion" to be proposed to Supreme Court for further investigation, judgement and decide.

Second, the dismissal of Regional Head and / or Vice Regional Head without the suggestion of Regional Legislative Assembly. This kind of dismissal is conducted directly by President in two natures. First, temporary dismissal. Temporary Dismissal issued by President is done for the following reasons: a) If the pointed persons is stated to have conducted a serious criminal offence and is threatened with 5 years imprisonment at least or more based on the court decision ( according to this article, the pointed court is the first stage of court/ state court). B)

he is being suspected for a terrorism act, betrayal and / or other criminal act that is endangering the State. Second, Permanent Dismissal. Permanent Dismissal is issued by President without any suggestion from the Regional Legislative assembly due to the following reason: a) being proved to have conducted a criminal act with at least 5 years imprisonment or more based on the court decision which has gained a permanent law empowerment; b) being proved to have conducted a terrorism act, betrayal and/or criminal act that may endangering the State.

Dismissal of Regional Head and or Vice Regional Head contained on the Law of Regional Government is more concern about the law mechanism rather than the Political mechanism through its Policy responsibility. Dismissal with a law mechanism which is settled through Judgement process is considered more fair and clear compare to that of Political mechanism through Regional Legislative Assembly.

On the mechanism of dismissal of Regional Head and / or Vice regional Head, as well captive of the previous Law of Regional Government, President hegemony is still dominant. This can be seen in the approval of future Regional Head and his Vice or even in the inauguration of Regional Head and or Vice Regional Head.

Considering the election process and approval also the dismissal of Regional Head and or his Vice in every region will come shortly as their ruling period are almost off, then the forming or Government Regulation which govern about the implementation of this dismissal is becoming a priority task that can not be postponed any longer.

**ABSTRACT**  
**THE DISMISSAL OF REGIONAL HEAD**  
**BASED ON LAW NO. 32 YEAR 2004**  
**OF REGIONAL GOVERNMENT**  
**IMAM ROPII**

The dismissal of Regional Head as well contained on Law of Regional Government Number 32 Year 2004 by following the term prevail on Basic Law (UUD) 1945 amendment shall be conducted during his ruling period. The dismissal of Regional Head and or Vice Regional Head in their ruling period, seeing through the process is conducted in two model of dismissal.

First, dismissal of Regional Head and/or his Vice are conducted based on the suggestion of Regional Legislative Assembly which is then approved by President. There are three ways of dismissal based on this model, which are based on the decision of Regional Legislative Assembly, directly suggest for a dismissal to the President based on article 29 verse (2) a and b, and by the decision of Regional Legislative assembly, they propose it to the Supreme Court to give further consideration upon the opinion of Regional Legislative Assembly based on the reason as well mentioned on article 29 verse (2) c,d,e and f, also due to the suspicion that he has conducted a criminal offence and if there is an indication that his case shall be put on Police Authority (article 32).

Second, the dismissal of Regional Head and/or Vice Regional Head by President without the suggestion of Regional Legislative Assembly. This model is conducted by President both for Temporary Dismissal or permanent dismissal due to reasons have conducted criminal offence and is threatened for at least 5 years imprisonment or more and suspected for terrorism act, betrayal and or criminal act that may endangering the State (article 30 and 31).

Dismissal of Regional Head and/or his Vice Regional Head in this Law is more concern on the Law mechanism through Judgement process rather than Political mechanism through the justification of Regional Legislative Assembly, where the Law mechanism is considered more fair and objective.

Considering the Election implementation of Regional Head and or his Vice which based on the Law of Regional Government will be coming shortly, the Issuance of Implementation rules from this law is becoming a necessity which can not be postponed any longer.

Key word : Dismissal of Regional Head, Law No. 32/2004