

## LEGAL REVIEW OF ABUSE OF POWER BY REGIONAL HEADS FROM THE PERSPECTIVE OF CONSTITUTIONAL LAW

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### Abstract

This study aims to examine the legal aspects of abuse of power by regional heads from a constitutional law perspective. Regional heads, as public officials, have limited authority regulated by laws and regulations. However, in practice, it is not uncommon to find regional heads who abuse their authority for personal or group interests, which ultimately harms the public interest and violates the principles of democracy and the rule of law. The method used in this study is a normative legal approach, by examining relevant laws and regulations, such as Law Number 23 of 2014 concerning Regional Government and Law Number 30 of 2014. The results of the study indicate that abuse of power by regional heads constitutes a violation of the principles of accountability, transparency, and the rule of law in the Indonesian constitutional system. Therefore, it is necessary to strengthen the supervisory system and a firm law enforcement mechanism to prevent and prosecute abuse of power by regional heads. This study recommends reformulating the supervisory and guidance policies for regional heads as an effort to strengthen the principles of good governance in the implementation of regional government.

**Keywords : Abuse of Power, Regional Head, Constitutional Law, Regional Government, Good Governance**

### INTRODUCTION

The definition of abuse of authority in the review of constitutional law can be categorized into three forms, namely abuse of authority which carries out all actions to benefit personal, group or group interests, abuse of authority where the actions by officials are aimed at the public interest but deviate from the objectives set forth by statutory regulations, namely abuse of authority which carries out all actions to benefit personal, group or group interests, abuse of authority where the actions by officials are aimed at the public interest but deviate from the objectives set forth by statutory regulations, and abuse of authority which abuses procedures that should be used to achieve certain goals but uses other procedures so that they can be implemented according to wishes.<sup>1</sup> Government agencies related to power. The principle of citizenship includes decision-making based on authority, and the implementation of authority must have a sense of responsibility based on authority, and the implementation of authority must have a sense of responsibility and be tested by legal rules and legal principles. This authority is based on law to act and make decisions in accordance with the authority granted to him by statutory regulations. Abuse of power by regional heads arises because of the authority they have, so it is necessary to briefly discuss the issue of authority first before discussing the concept of abuse of power by regional heads. Indonesia's system of government is decentralized, as stipulated in Article 18 of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which grants regional governments the authority to administer government affairs independently based on the principles of autonomy and assistance. The implementation of this system is evident in the position of regional heads who play a strategic role in the administration of regional government, including at the district level. With such extensive authority, regional heads hold a strategic position in determining policy direction, development planning, and managing regional budgets. However, such extensive authority without strong oversight can open the door to abuse of power. In practice, regional heads are often found to be involved in acts of abuse of power that violate the basic principles of

<sup>1</sup> Indriyanto Seno Adji, *Corruption and Law Enforcement*, 1st ed., (Jakarta: Diadit Media, 2009), pp. 2-3.

# LEGAL REVIEW OF ABUSE OF POWER BY REGIONAL HEADS FROM THE PERSPECTIVE OF CONSTITUTIONAL LAW

Pasrah Kasih Sejati Hulu et al

constitutional law and existing legal provisions.<sup>2</sup> Abuse of power by regional heads not only undermines ethical governance but also violates constitutional principles such as the rule of law, accountability, and limitations on power. In practice, many regional heads have been caught up in legal cases due to abuse of power. According to data from the Corruption Eradication Commission (KPK), hundreds of regional heads have been implicated in corruption cases since 2004. One striking example is the case of Probolinggo Regent Puput Tantriana Sari, who, along with her husband, was arrested by the KPK for alleged bribery and money laundering.<sup>3</sup> This phenomenon indicates an imbalance between the power held by regional heads and the oversight mechanisms that should limit the potential for abuse of that power. From a constitutional law perspective, the actions of regional heads who abuse their power cannot be separated from constitutional and legal responsibility. Constitutional law regulates basic principles regarding the limitation of power, checks and balances, and the accountability of public officials.

According to Yopie Moria, abuse of power refers to an act in which a person or party uses their power or authority illegally or in a wrongful manner for personal or group interests. This act aims to obtain certain advantages or benefits, whether in the form of material or position, which in turn can cause significant harm to other innocent individuals or groups, and is contrary to the norms and principles of justice that exist in the applicable legal system.<sup>4</sup> In general, the term abuse of power is not limited to government officials or individuals holding legal authority within a government system, but also includes people who abuse their position or power, regardless of the title or position they hold. It refers to arbitrary actions carried out by anyone, without regard to the limitations or rules applicable to the position or role they hold, with the aim of pursuing certain personal or group interests.<sup>5</sup> The abuse of power committed by regional heads in the district environment can involve a number of actions that are detrimental and contrary to applicable legal principles, such as criminal acts of corruption committed by exploiting official positions to obtain personal gain, nepotism practices that prioritize the interests of family or relatives in appointing officials or procuring goods and services, abuse of authority that deviates from the authority granted by laws and regulations, as well as violations of various basic principles of good governance that should be implemented in every government process, such as transparency, accountability, and justice.

This phenomenon of abuse of power not only negatively impacts public trust in government performance but also hinders the smooth development process at the regional level. Furthermore, such actions also cause significant harm to the interests of society as a whole, hindering the achievement of more just and equitable social and economic goals within a region. From a constitutional law perspective, abuse of power by a regional head violates the fundamental principles of the rule of law, such as legality, accountability, and transparency.<sup>6</sup> Therefore, effective legal oversight and accountability mechanisms are needed to prevent and address such abuses of power. In the concept of administrative law, every grant of authority to a state administrative body or official is always accompanied by the "intent and purpose" of that grant. If the use of the authority in question is not in accordance with and in line with the "intent and purpose" of the actual granting of authority, it is almost certain that an abuse of authority (*detournement de pouvoir*) has occurred.<sup>7</sup>

Supervision of regional heads can be carried out by various authorized institutions, both operating at the central and regional levels. Therefore, it is important to conduct a legal review of the forms of abuse of power by regional heads and the existing mechanisms of supervision and legal accountability. Based on the description above, the researcher is interested in studying and discussing further about **the LEGAL REVIEW OF ABUSE OF POWER BY REGIONAL HEADS FROM THE PERSPECTIVE OF CONSTITUTIONAL LAW.**

## RESEARCH METHODS

<sup>2</sup> Sedarmayanti, *Good Governance*, Part One Revised Edition. Bandung, Mandar Maju, 2012, p. 45

<sup>3</sup> Tempo, "The Husband and Wife of the Former Regent of Probolinggo Sentenced to 6 Years in Prison Plus Rp 57 Billion in Restitution in a Gratification and Money Laundering Case" <https://www.tempo.co/hukum/pasangan-suami-istri-eks-bupati-probolinggo-dituntut-6-tahun-penjara-plus-uang-pengganti-rp-57-miliar-dalam-kasus-gratifikasi-dan-pencucian-uang-1192208> (accessed May 21, 2025)

<sup>4</sup> Yopie Moria, *The Foundations of Constitutional Law*, Smart Publisher, Jakarta, 2015, p. 112.

<sup>5</sup> Adrian Rahman, *Recognizing Abuse of Power by the Government from the Perspective of State Administrative Law*, <https://www.kompasiana.com/adrianrahman3428/665731afc925c42c7c496a65> Accessed April 24, 2025 at 20:42 WIB

<sup>6</sup> Reydonnyzar Moenek, et al., *Good Governance in Regional Financial Management*, Bandung, Rosda, 2019, p. 102.

<sup>7</sup> Janpatar Simamora, Risma Elfrida Esther Manik, *Legal Politics in Combating Corruption During Indonesia's Era of Regional Autonomy*, Journal of Indonesian Legal Studies, Vol 10, No 1, 2025, p. 139.

This research uses a normative juridical research method, which is a research method used by examining primary legal materials, secondary legal materials, and relevant tertiary legal materials. <sup>8</sup>Normative juridical research aims to examine legal norms in the form of laws and regulations, doctrines, and court decisions. As a supporting form of valid research, it is not only based on existing knowledge, but also information in the form of relevant data and is used as writing materials for analysis in the end. The data collection technique used by researchers is library research, in addition to using books, researchers also conduct internet searches to obtain scientific journals, theories, previous studies, and opinions that are relevant to the problem being studied.

## **RESULTS AND DISCUSSION**

Authority is the power granted by public law to government officials to carry out an activity. In Law No. 30 of 2014, authority and powers are placed in Chapter I concerning General Provisions, which regulates the meaning or definition. Authority is placed in Article 1 number 5, while authority is placed in Article 1 number 6. Logically, by placing authority and power in Article 1 with different numbers, it is meant that between the two, namely authority and power, there is a difference between authority and power carried out by aligning and/or juxtaposing authority with power so that it can be seen expressively, *namely Authority* is interpreted as the right of government agencies or officials or other state administrators to make decisions or act in the administration of government, while authority is the agency or government officials or other state administrators to act in the field of public law.

The comparison between authority and power shows the existence of differentiating elements and the existence of similar elements between authority and power. The differentiating elements between authority and power are that in authority, the entity is given as a right, while in authority, the entity is given as a power. The terms rights and power in practice are often interchanged and considered as synonyms, two different words but given the same meaning. Authority is related to decisions or actions in the administration of government, while authority is related to behavior in the field of public law. The use of authority by an agency or government can be carried out in the realm of public law and the realm of private law, while authority is only in the realm of public law. The similarity between authority and power lies in the subject of the owner of the authority and power, which are both owned by Government Agencies and Officials such as regional heads. The distinction made by Law No. 30 of 2014 regarding authority and power has become an academic and legal debate, for practical purposes because their use is often interchangeable and does not carry a different meaning so that between authority and power does not need to be considered sharply. The 1945 Constitution of the Republic of Indonesia as the basic law of the state becomes the constitutional umbrella for the existence and existence of state institutions in carrying out their duties and powers.<sup>9</sup>

The legal issue related to the source of authority is where the authority of government agencies and officials is obtained. In positive law based on the provisions of Article 11 of Law No. 30 of 2014, the authority of Government Agencies and/or Officials is obtained through 3 ways, namely, attribution, delegation, and mandate. Responsibility for authority, Government Agencies and/or Officials who obtain authority derived from attribution authority are agencies and Government Officials who receive attribution authority, likewise for authority derived from delegation authority, responsibility lies with the agencies and government officials who receive delegation authority, while responsibility in terms of authority derived from mandate authority lies with the mandate giver. Transfer of authority, recipients of attribution authority cannot delegate their attribution authority, unless regulated by the 1945 Constitution of the Republic of Indonesia and the Law. Recipients of authority cannot be delegated unless otherwise determined by the authority in the form of directives unless determined by Law and Regulations. The use of authority and power by Government Agencies or Officials is not without limits, according to Article 15 paragraph 1 of Law No. 30 of 2014, the government is limited by paragraph 3, namely the term of office or grace period of the agency, the region or area where the agency is located and the area of authority or scope materially. Empirically, by paying attention to the laws and regulations in force in Indonesia, restrictions on authority and power can occur due to the failure to fulfill the quorum in decision-making and/or action.

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<sup>8</sup>Janpatar Simamora, Bintang ME Naibaho, *Constitutional Guarantees Towards The Principles Of Freedom And Independence Of The Prosecutor's Office In The Exercise Of State Power*, Jurnal Arena Hukum, Vol 18, No 2, 2025, p 202.

<sup>9</sup> Janpatar Simamora, Bintang ME Naibaho, *Strengthening the Constitutional Foundation of the Prosecutor's Office in the Constitutional System of the Republic of Indonesia*, Constitutional Journal, Vol 22 No 2, 2025, p. 348

## LEGAL REVIEW OF ABUSE OF POWER BY REGIONAL HEADS FROM THE PERSPECTIVE OF CONSTITUTIONAL LAW

Pasrah Kasih Sejati Hulu et al

The Unitary State of the Republic of Indonesia is a state based on law. This provision is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This requires that the law must be upheld and every citizen and state apparatus must base their actions on the law. Thus, the implementation of state governance is based on and regulated according to constitutional provisions, as well as other legal provisions, namely laws, government regulations, regional regulations and other legal provisions determined democratically and constitutionally.<sup>10</sup> Regional autonomy, as stipulated in the 1945 Constitution of the Republic of Indonesia, grants regions the authority to regulate and manage their own government affairs. As executive officials at the regional level, district heads hold a strategic position in governance.<sup>11</sup> Regional governments are understood as government organizations with specific characteristics closely related to the conditions and potential of a particular region. In the practice of governance, particularly in regional government development, regional economic potential is an important indicator for both regional expansion and the transfer of regional affairs. Any transfer of government affairs to regional governments should take into account regional economic potential.

Regional heads at the district level are regional executive leaders responsible for running the government based on the principle of regional autonomy. In the context of Indonesian constitutional law, the power and authority held by regional heads are mandated by the constitution and laws and must be implemented in accordance with the principles of democracy and public accountability. However, substantial power can be abused if not accompanied by effective control mechanisms. From a constitutional law perspective, abuse of power by regional heads contradicts the principles of *good governance*, constitutionality, and accountability of public power. The term "*good governance*" is often used to refer to good governance in government to ensure welfare. In practice, the principles of *good governance* in every aspect of government administration play a role in creating a clean government.<sup>12</sup> The Constitutional Principle is a doctrine or concept rooted in the principle that government should be limited by law and that government should be subject to the law.<sup>13</sup> The principle of accountability means that every unit of government, from public officials to institutions, is responsible for the decisions entrusted to them.<sup>14</sup> Abuse of power by regional heads can occur in various forms, ranging from corruption, collusion, and nepotism to intervention in administrative processes and decision-making that should be professional. In the context of regional heads, these forms of deviation often have a direct impact on the quality of public services, public trust, and political stability and regional development. The following are forms of abuse of power by regional heads: Corruption, Collusion, and Nepotism

Corruption, Collusion, and Nepotism (KKN) is a form of abuse of authority by state officials for personal gain, certain groups, or their family members, which negatively impacts the interests of society and the state. Corruption occurs when someone uses public office illegally to gain personal or private gain. Collusion is a form of covert cooperation, usually involving officials and private parties or between officials, aimed at gaining profit through unlawful means. Meanwhile, nepotism is the tendency to give certain positions, projects, or facilities to relatives or close associates without considering their abilities or suitability. This practice of KKN disrupts the principles of clean governance such as justice, openness, and responsibility, and is a major obstacle to a transparent and integrated development process. Based on a study by the Ministry of Home Affairs, several factors have contributed to the increasing number of regional heads implicated in corruption cases. First, regional heads come from diverse backgrounds, ranging from bureaucrats, politicians, businesspeople, and even celebrities. Given these diverse backgrounds, their ability and understanding of bureaucracy, particularly regarding regional financial regulatory systems, are severely lacking. Second, limited human resources in the regions are often found, especially with incompetent individuals being given strategic positions simply because they are members of campaign teams. Third, the root cause of corruption among regional heads is the high cost of campaigns and elections, forcing all regional heads to compete to recoup their campaign costs. It is highly unlikely that a regional head's salary alone will cover

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<sup>10</sup>Rudy, *Regional Government Law: A Constitutional Perspective in Indonesia*, Bandar Lampung: Indepth Publishing, first edition, 2012, p. 76

<sup>11</sup>Muntoha, *Regional Autonomy and the Development of Regional Regulations with Sharia Nuances*, Yogyakarta: Safiria Insania Press, 2010, p. 122.

<sup>12</sup> Maharani Mufti Rahajeng, " *Application of Good Governance Principles in Village Fund Management in Wlahar Wetan Village, Kalibagor District, Banyumas Regency*", *Public Policy And Management Inquiry*, Vol 4, 2020, Pg 164

<sup>13</sup>Mihamad Hidayat Muhtar, *Constitutionalism and Constitutional Principles*, Gorontalo: Sada Kurnia Pustaka, 2023 p. 18

<sup>14</sup>Warka Syachbraini, *Central and Regional Government Accounting*, Banten: Pt Sada Kurnia Pustaka, 2024, p. 24

the enormous costs of the nomination process.<sup>15</sup> The Principle of *Good Governance* as a Basis for Assessing Abuse of Power The concept of good governance has developed into a new paradigm in the administration of government and cannot be separated from the concept of governance, which according to history was first adopted by practitioners in international development institutions, which contains connotations of effective performance related to public management and corruption.<sup>16</sup> In the administration of government for public services, the involvement of non-governmental parties (*private sector*) and society (*society*) is essential. The involvement of non-governmental parties (*private sector*) and society (*society*) ensures good governance. Through the involvement of non-governmental parties (*private sector*) and society (*society*), it is hoped that the government will not act unilaterally, but will work together in decision-making to ensure the provision of public goods and services.

Authority essentially encompasses the rights and obligations of government officials to carry out certain legal actions. The right to carry out certain actions represents freedom within government, while the obligation to carry out certain actions is a requirement. This is in accordance with the opinion of P. Nicolai as quoted in FAM Stroink and JG Steenbeek, it is stated that "*Het vermogen tot het verrichten van bepaalde rechtshandelingen (handelingen die op rechtsgevolg gericht zijn en dus ertoe strekken dat bepaalde rechtsgevolgen ontstaan of teniet gaan). Een recht houdt in de (rechtens gegeven) vrijheid om een bepaalde feitelijke handeling te verrichten of na te laten, of the (rechtens gegeven) aanspraak op het verrichten van een handeling te verrichten of na te laten.*"<sup>17</sup>

The definition of authority comes from the law of government organizations, which can be explained as the entirety of the rules concerning the acquisition and use of government authority by public law subjects in public legal relations, regarding the governing power of government organizations which is the object of administrative law studies. Through authority, government apparatus is given legal power to regulate and control society. The use of authority as legal power does not necessarily mean that the authority cannot be controlled. Every government authority must be accountable for its use in controlling and regulating the lives of society. The concept of abuse of authority among legal experts still differs regarding its form. Sjachran Basah states that forms of abuse of authority consist of unlawful state administrative actions (*onrechtmatige overheidsdaad*), state administrative actions that abuse authority (*detournement de pouvoir or ultra vires*), and arbitrary state administrative actions (*abus de droit*).<sup>18</sup> Abuse of authority can occur in both bound and free authority types as previously stated. Deviation from bound authority occurs because the action is not in accordance with the purpose of the authority as clearly regulated in the legislation, while deviation from free authority is also measured based on the level of implementation of the authority with the objectives achieved. For a government action that can be classified as abuse of authority, the testing parameter is that the government action is intended to use authority for purposes other than the purpose for which the authority was granted.

In the Indonesian legal system, this parameter was once present in Article 53 paragraph (2) point b of Law Number 5 of 1986 concerning State Administrative Courts. Testing acts of abuse of authority caused by deviations from bound authority, the testing parameters are based on the legality of government actions. For testing acts of abuse of authority caused by deviations from free authority, the testing parameters are based on the General Principles of Good Governance (AAUPB). The use of AAUPB as a testing parameter is based on the consideration that the use of free authority in government actions cannot be measured by *wetmatigheid parameters* (based on statutory regulations). Testing abuse of authority against bound authority is a substantive test of the legality of government actions. To test acts of abuse of authority, the principle of specialization (principle of purpose) is used.

Regarding the testing of acts of abuse of authority caused by acts of deviation from free authority with testing parameters based on the General Principles of Good Governance (AAUPB). AAUPB is a norm of behavior of officials (*overheid gedrag*) which is based on general norms of good behavior (*algemene normen van goed overheidsgedrag*). AAUPB is essentially an unwritten legal principle that was originally produced from research on judges' decisions or jurisprudence in the Netherlands, R. Crinca Le Roy in the advanced training of Constitutional Law - Governance Law at the Faculty of Law, Airlangga University in 1976 put forward eleven principles of good governance (*principle of good administration*) and which Kuntjoro Purbopranoto in Indonesia added more principles, namely: The principle

<sup>15</sup> Yogi Mahendra Deswantara, "Government Efforts to Create a Government Free from Corruption, Collusion, and Nepotism", Journal of Legal Studies, Vol 8, No 16, 2012 p. 86

<sup>16</sup> Sadu Wasistiono, Selected Chapters on the Implementation of Regional Government, 2nd edition, Fokusmedia, Bandung, 2003, p. 30.

<sup>17</sup> FAM Stroink en JG Steenbeek, Inleiding in Het Staats-en Administratief Recht, Samson HD Tjeenk Willink, Alphen aan den Rijn, 1985, P.26,

<sup>18</sup> Sjachran Basah, Existence and Benchmarks of Administrative Court Bodies in Indonesia, Alumni, Bandung, 1985, pp. 238-239.

# LEGAL REVIEW OF ABUSE OF POWER BY REGIONAL HEADS FROM THE PERSPECTIVE OF CONSTITUTIONAL LAW

Pasrah Kasih Sejati Hulu et al

of legal certainty, The principle of balance, The principle of equality, The principle of acting carefully, The principle of motivation for every decision, The principle of not mixing authority, The principle of fair play, The principle of justice or fairness, The principle of responding to reasonable expectations, The principle of eliminating the consequences of a void decision, The principle of protection of personal views (way of life), The principle of wisdom, The principle of organizing public interests.

In the Explanation of Article 53 paragraph (2) letter b of Law Number 9 of 2004 it states that "What is meant by "general principles of good governance" includes the principles of legal certainty, orderly state administration, openness, proportionality, professionalism, accountability, as referred to in Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism. AAUPB or what is called the principle of good administration as stated above, in the administrative law approach has similarities with the characteristics of good governance as referred to by GH Addink as *the principle of Good Governance* .

Testing for abuse of authority based on the principle of proper administration, which is part of the principle of good governance using the principle of specialization as stated above, is a parameter to determine whether there is an act of abuse of authority. A government action is categorized as an act of abuse of authority, then the government action in question is included in the category of maladministration. Regarding the term maladministration, Philipus M. Hadjon and Tatiek Sri Djatmiati argue that " *The concept of maladministration is related to administrative behavior. Maladministration as derived from Latin mal - malum meaning bad or evil and administration - administrare meaning service. In thus sense, maladministration stands for bad service* ".<sup>19</sup>

## CONCLUSION

Abuse of power by regional heads constitutes a serious violation of the fundamental principles of Constitutional Law, particularly the rule of law, democracy, and clean government. In the Indonesian constitutional system, regional heads are not only administrative leaders in their regions but also public officials who are obliged to exercise their powers within legal boundaries and the principles of good governance. A legal review shows that actions by regional heads who exceed or abuse their authority can result in administrative sanctions, criminal penalties, or even dismissal, as stipulated in laws and regulations such as Law Number 23 of 2014 concerning Regional Government, the Corruption Eradication Law, and other related regulations. Oversight mechanisms by the Regional People's Representative Council (DPRD), the Corruption Eradication Commission (KPK), and the judiciary are integral to preventing and addressing such abuse. Thus, from a Constitutional Law perspective, abuse of power by regional heads not only undermines public trust but also threatens the democratic order and the rule of law. Strict prevention and law enforcement are essential to ensure that regional heads exercise their authority accountably and in accordance with the constitution.

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<sup>19</sup> Philipus M. Djatmiati Tatiek Sri Djatmiati, *Maladministration as the Criteria of Review of Administrative Behavior*, presented at the Seminar on Non-Judicial Enforcement of Human Rights and Good Governance: The Ombudsman – And The Human Rights Commissions in a Comparative Perspective, Collaboration between Airlangga University – Utrecht Universiteit, Surabaya, 15-17 April 2004. (hereinafter referred to as Philipus M. Hadjon and Tatiek Sri Djatmiati II).

## LEGAL REVIEW OF ABUSE OF POWER BY REGIONAL HEADS FROM THE PERSPECTIVE OF CONSTITUTIONAL LAW

Pasrah Kasih Sejati Hulu et al

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