



Ultra Vires Actions of Regional Heads in Official Replacement

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Abstract

Background: The replacement of officials by regional heads must comply with the principle of legality, the merit system, and statutory provisions. However, replacements conducted without authority, beyond authorized powers, or contrary to legal provisions (*ultra vires*) reveal gaps between administrative law and governance practices, threatening legal certainty and the rights of state civil apparatus personnel.

Objective: This study examines the effectiveness of government supervision over *ultra vires* actions by regional heads in replacing officials and their legal consequences from a state administrative law perspective.

Methods: This normative legal research employs statutory, conceptual, and case approaches. Primary, secondary, and tertiary legal materials were collected through a literature review and analyzed qualitatively using a prescriptive approach.

Results: Supervisory mechanisms remain ineffective because preventive supervision applies only under specific conditions. Outside these conditions, supervision predominantly relies on repressive mechanisms through the State Administrative Court. *Ultra vires* actions produce administrative decisions with defects of authority (*bevoegdheidsgebrek*), affecting their validity, the employment status of state civil apparatus personnel, and regional heads' legal accountability. These findings highlight the need for stronger safeguards against unlawful replacements.

Conclusion: Strengthening preventive supervision and clarifying regulations on the classification and legal consequences of administrative decisions that are void *ab initio* are necessary to ensure legal certainty, safeguard personnel rights, protect the merit system, and promote good governance.

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INTRODUCTION

Indonesia is constitutionally affirmed as a state based on law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 NRI Constitution). The consequence of this rule-of-law principle is that every action of government administrators, including regional heads, must be based on law and cannot be carried out arbitrarily. From the perspective of state administrative law, the principle of legality is a fundamental principle that limits the exercise of government authority while also providing legal protection to citizens and government officials. In principle, every government decision and action must have a clear legal basis and comply with statutory regulations and the General Principles of Good Governance (AUPB) (Law of the Republic of Indonesia Number 30 of 2014). This principle becomes increasingly important in the implementation of regional government because regional heads exercise strategic authority directly related to bureaucratic structures, personnel management, and the career sustainability of state civil apparatus (ASN).

Ideal regional governance requires not only compliance with the principle of legality but

also the application of the principles of good governance. These principles include legal certainty, expediency, impartiality, accuracy, non-abuse of authority, openness, public interest, and good service. Normatively, the AUPB are regulated in Article 10 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, which includes the principles of legal certainty, expediency, impartiality, accuracy, non-abuse of authority, openness, public interest, and good service ([Law of the Republic of Indonesia Number 30 of 2014](#)). The AUPB serve an important function as a control instrument over the actions of government officials so that the exercise of authority remains within the framework of administrative law. In the context of bureaucracy, the application of these principles is also closely related to efforts to maintain the professionalism and neutrality of ASN against political intervention ([Perdana, 2019](#); [Wiraganti et al., 2025](#)).

The authority of regional heads in the implementation of regional government has a constitutional basis in Article 18 paragraph (2) of the 1945 NRI Constitution, which states that regional governments regulate and manage their own governmental affairs according to the principles of autonomy and co-administration. However, Article 18 paragraph (5) of the 1945 NRI Constitution affirms that the implementation of regional autonomy remains within the framework of the unitary state and is subject to limitations prescribed by law. Thus, the authority of regional heads is not absolute but must be exercised based on the limits, objectives, and procedures determined by statutory regulations. This principle is consistent with the administrative law doctrine that government authority must always have a legal basis and be exercised in accordance with the purpose for which the authority was granted ([Law of the Republic of Indonesia Number 30 of 2014](#)).

Further regulation regarding the authority of regional heads is contained in Law Number 23 of 2014 concerning Regional Government. Article 65 paragraph (1) letter a stipulates that regional heads have the duty to lead the implementation of governmental affairs that fall within the authority of the region based on statutory provisions and policies jointly determined with the Regional House of Representatives (DPRD). Meanwhile, Article 65 paragraph (2) grants a number of authorities to regional heads, including establishing regional head regulations and regional head decisions and exercising other authorities in accordance with statutory provisions ([Law of the Republic of Indonesia Number 23 of 2014](#)). Thus, the authority of regional heads in government administration and personnel management must still be exercised based on the principles of legality, legal certainty, and non-abuse of authority.

In the context of personnel management, the authority of regional heads must be aligned with the merit system principle in ASN management. The latest regulatory developments show that Law Number 20 of 2023 concerning the State Civil Apparatus has replaced Law Number 5 of 2014 concerning the State Civil Apparatus. The merit system essentially places qualifications, competence, potential, performance, integrity, and organizational needs as the principal bases for ASN career management, rather than political relationships or personal connections. Therefore, the authority of Personnel Management Officers to appoint, transfer, and dismiss ASN personnel must be exercised objectively and in accordance with the merit principle ([Law of the Republic of Indonesia Number 20 of 2014](#)). In practice, the implementation of the merit system at the regional level still faces challenges due to the possibility of political intervention in the process of filling bureaucratic positions ([Wargadinata, 2024](#)). Recent studies on ASN personnel management emphasize the importance of structured, needs-based competency development and professional career management in government institutions, which is consistent with the merit-oriented personnel framework required in regional administration ([Setiawan, 2023](#); [Sihombing, 2023](#); [Sinaga & Arianto, 2025](#)).

Technical provisions regarding PNS management are regulated, among others, through Government Regulation Number 11 of 2017 concerning Civil Servant Management, as amended by Government Regulation Number 17 of 2020. These regulations affirm the importance of qualification requirements, competence, performance, and objective mechanisms in PNS career development. Thus, the appointment and transfer of ASN personnel should not be based solely on subjective considerations or political interests but must take into account position requirements and organizational needs. This principle is a consequence of the application of the merit system in ASN management ([Government Regulation of the Republic of Indonesia Number 11 of 2017](#); [Government Regulation of the Republic of Indonesia Number 17 of 2020](#)).

From the perspective of state administrative law, government officials' actions that exceed the limits of their authority can be understood through the *ultra vires* doctrine. This concept concerns actions of government bodies or officials that are carried out beyond the authority granted by law or in a manner inconsistent with the purpose for which the authority was granted. Within the framework of the Government Administration Law, every government decision and action must be based on statutory regulations and the AUPB. If authority is exercised unlawfully or diverted from its legally prescribed purpose, such actions may raise issues concerning the validity of government administrative decisions ([Law of the Republic of Indonesia Number 30 of 2014](#)). Therefore, in the context of ASN official replacement, violations of substantive or procedural requirements may indicate an exercise of authority that is inconsistent with its legal limits.

In empirical practice, the replacement of officials by regional heads is not always free from political interests. The phenomenon of bureaucratic politicization is particularly visible in the processes of appointment, promotion, rotation, and transfer of ASN officials at the regional level. Research by Wargadinata ([2024](#)) shows that although selection mechanisms and competency assessments have been designed based on the merit principle, the final decision-making process concerning position promotions in regional governments can still be influenced by the political interests of regional heads. These findings indicate a tension between the principle of meritocracy and political realities in regional bureaucratic management. Wargadinata ([2024](#)) is used here as contextual evidence of political intervention in the promotion of government officials in Indonesia; its object concerns bureaucratic promotion and political intervention, so the present study does not treat it as methodologically equivalent to this normative legal case analysis.

The issue of bureaucratic politicization is also found in various studies on regional government administration. Research on bureaucratic politicization in the 2020 Bandung Regency Regional Election shows that political intervention can occur through the strategic rotation of ASN officials and the process of filling bureaucratic positions. This condition is reinforced by the position of regional heads as Personnel Management Officers, who exercise significant authority in ASN career management ([Abidin et al., 2025](#)). Other research also shows that bureaucratic politicization can affect ASN neutrality and has the potential to transform the bureaucracy into an instrument of political interests, thereby disrupting the principles of professionalism and public service ([Wiraganti et al., 2025](#)).

Another factual issue is the practice of appointing ASN personnel to certain positions without meeting the position requirements prescribed by statutory regulations. The requirements for appointment to PNS positions must essentially take into account qualifications, competence, performance, integrity, and other requirements established for the position concerned ([Government Regulation of the Republic of Indonesia Number 11 of 2017](#)). Therefore, the appointment of ASN personnel who do not meet the applicable position requirements may raise legal issues because the decision has the potential to be inconsistent with the merit system principle and the provisions governing ASN management. In this context, it is important to distinguish between the authority of regional heads as Personnel Management Officers and the exercise of that authority to appoint officials who do not meet normative requirements. The authority possessed by government officials cannot be used to disregard legal requirements that have been established.

It should be noted that State Civil Service Agency Regulation Number 1 of 2019 is not appropriate as a legal basis for PNS class or rank requirements because this regulation governs the technical guidelines for the procurement of Government Employees with Work Agreements (PPPK) and was subsequently amended through State Civil Service Agency Regulation Number 18 of 2020 ([Badan Kepegawaian Negara, 2019](#)). Thus, arguments regarding PNS rank requirements should instead be based on the provisions of Government Regulation Number 11 of 2017, as amended by Government Regulation Number 17 of 2020, and other technical regulations that specifically govern PNS positions. This correction is necessary to ensure that the normative basis of the research does not conflate the regulatory regimes governing PNS and PPPK.

Official replacement actions carried out *ultra vires* create complex legal issues. From the perspective of administrative law, government decisions or actions that are inconsistent with the legal basis of authority, prescribed procedures, or substantive requirements under statutory

regulations may raise issues concerning the validity of administrative decisions. Law Number 30 of 2014 affirms that every government decision and action must be based on statutory provisions and the AUPB. Thus, if a regional head uses their authority to replace officials while disregarding legal requirements, the merit system, or prescribed procedures, such actions may become subject to legal review through government administrative mechanisms and proceedings before the State Administrative Court ([Law of the Republic of Indonesia Number 30 of 2014](#)). More specifically, Articles 8–10 of Law Number 30 of 2014 require government decisions and actions to be taken by authorized government officials, based on statutory authority, and consistent with the AUPB; these provisions form part of the statutory basis for the legality review applied in this study.

The practice of *ultra vires* in official replacement also has systemic implications for regional governance. Political intervention in the bureaucracy has the potential to disrupt ASN neutrality, weaken the implementation of the merit system, reduce bureaucratic professionalism, and ultimately affect the quality of public services. Perdana (2019) affirms that bureaucratic politicization can threaten ASN neutrality and that strong supervisory mechanisms are needed to limit the intervention of political officials in the bureaucracy. More recent findings also show that bureaucratic politicization remains a challenge to maintaining ASN neutrality and performance at the regional level ([Wiraganti et al., 2025](#)).

Based on the foregoing, there is a clear gap between the *das sollen*—the legal norms requiring regional head authority to be exercised based on the principle of legality, the AUPB, the merit system, and ASN management requirements—and the *das sein*—the practice of appointing, transferring, and replacing officials, which in a number of cases remains influenced by political interests. This gap indicates the importance of conducting more in-depth legal studies regarding the limits of regional head authority in ASN official replacement and the legal consequences when such authority is exercised *ultra vires*. This research is important for developing a legal construction concerning the parameters of regional head authority, forms of deviation in ASN official replacement, and the legal consequences of decisions made by exceeding or abusing authority.

METHOD

This research employed normative legal research methods aimed at examining the legal norms, principles, doctrines, and statutory regulations governing the authority of regional heads in the appointment, transfer, and replacement of government officials, particularly in relation to the *ultra vires* doctrine. Normative legal research was employed because the primary focus of the research was to examine the conformity between the authority granted to regional heads under statutory regulations and the legal limits governing the exercise of such authority. The analysis was directed at identifying the legal basis of authority, the limits and objectives of authority, forms of abuse or exceeding of authority, supervisory mechanisms, and the legal consequences arising from administrative decisions issued beyond the authority granted by law.

This research employed several complementary legal approaches, namely the statutory approach, conceptual approach, and case approach. The statutory approach was used to examine relevant provisions in the 1945 Constitution of the Republic of Indonesia, Law Number 23 of 2014 concerning Regional Government, Law Number 30 of 2014 concerning Government Administration, Law Number 20 of 2023 concerning the State Civil Apparatus, Law Number 10 of 2016 concerning Regional Head Elections, Government Regulation Number 11 of 2017 concerning Civil Servant Management, as amended by Government Regulation Number 17 of 2020, and other relevant implementing regulations. This approach was used to identify the legal basis, scope, limitations, procedures, and supervisory mechanisms applicable to the authority of regional heads in the management of government officials.

The conceptual approach was used to examine legal concepts and doctrines relevant to the research, particularly the concept of authority (*bevoegdheid*), attribution, delegation, mandate, abuse of authority, government discretion, the *ultra vires* doctrine, the principle of legality, the General Principles of Good Governance (AUPB), the merit system, and the distinction between voidable decisions and decisions that are void *ab initio*. This approach was necessary to provide the theoretical and doctrinal foundations for determining whether an action taken by a regional head constituted a legitimate exercise of authority or exceeded the limits of authority

established by law.

The case approach was used to examine court decisions and administrative disputes relevant to the appointment, transfer, or dismissal of government officials. The case approach was important for understanding how the *ultra vires* doctrine, abuse of authority, administrative defects, and the validity of government decisions have been interpreted and applied in judicial practice. One of the decisions analyzed was the Surabaya State Administrative Court Decision Number 58/G/2009/PTUN.SBY, along with other relevant State Administrative Court decisions for which complete decision documents were available. The analysis of the cases focused on legal considerations, official authority, procedural requirements, and the legal consequences arising from disputed administrative decisions. The case corpus was centered on Surabaya State Administrative Court Decision Number 58/G/2009/PTUN.SBY because it addressed a personnel decision alleged to have been issued without a sufficient legal basis for the exercise of authority and therefore directly illustrated the authority-defect issue examined in this study. The decision was treated as the principal judicial case, while other decisions were used only when complete texts were available and they directly concerned appointment, transfer, or dismissal authority.

The legal materials used in this research consisted of primary, secondary, and tertiary legal materials. Primary legal materials included the 1945 Constitution of the Republic of Indonesia, laws, government regulations, ministerial regulations, relevant regulations issued by state agencies, and court decisions directly related to the authority of regional heads and State Civil Apparatus management. Secondary legal materials included scholarly books, peer-reviewed journal articles, legal research findings, legal commentaries, and academic works discussing state administrative law, government authority, *ultra vires*, the merit system, bureaucratic politicization, and the review of administrative decisions. Tertiary legal materials included legal dictionaries, encyclopedias, indexes, and other reference sources used to clarify legal terms and concepts.

The collection of legal materials was conducted through library research. The process began by identifying statutory provisions and legal documents relevant to the research issues. The collected legal materials were then classified according to their relevance to the research problems, including the sources and limits of regional head authority, mechanisms for preventing and correcting *ultra vires* actions, implementation of the merit system, and the legal consequences of administrative decisions containing authority defects. Relevant secondary literature was then used to strengthen the interpretation of statutory provisions and provide theoretical and doctrinal perspectives.

The collected legal materials were analyzed using qualitative and prescriptive juridical analysis. The analysis was conducted systematically through the interpretation of relevant legal provisions, comparison of statutory norms with legal doctrine, examination of legal considerations in court decisions, and construction of legal arguments based on the relationship between authority, procedures, substance, and the purposes of government actions. The analysis aimed not only to describe the applicable regulations but also to determine their appropriate legal interpretation and formulate legal arguments regarding the validity of regional head actions suspected of exceeding or abusing authority. The consistency of this qualitative interpretation was strengthened by cross-checking statutory provisions, judicial materials, and relevant secondary literature, in line with the general logic of triangulation in qualitative analysis (Nurfajriani et al., 2024).

The analysis was conducted through several stages. First, the research identified the sources and scope of authority possessed by regional heads as government officials and officials vested with authority in personnel management. Second, the research examined whether the exercise of such authority was consistent with the limits of authority, applicable procedures, substantive requirements, and the principles of good governance. Third, the research classified potential violations based on forms of abuse of authority, including exceeding authority, mixing authority, and arbitrary actions, as regulated in the Government Administration Law. Fourth, the research assessed the effectiveness of preventive and repressive supervisory mechanisms involving the President, the Ministry of Home Affairs, the State Civil Service Agency, relevant supervisory institutions, and the State Administrative Court. Fifth, the research analyzed the legal consequences of administrative decisions containing authority defects, including implications for

the validity of such decisions, the legal status of affected State Civil Apparatus personnel, and the legal accountability of regional heads.

To maintain analytical consistency, the research applied normative synchronization by comparing the *das sollen* contained in statutory regulations with legal issues identified in government practice and court decisions. This analysis was used to identify gaps, inconsistencies, or limitations in the applicable supervisory framework. The final stage of the research involved formulating prescriptive legal conclusions regarding the need to strengthen preventive supervision, clarify the legal consequences of *ultra vires* actions, and improve legal certainty concerning the distinction between voidable administrative decisions and decisions that are void *ab initio*.

Overall, the research analysis framework connected four main elements, namely (1) the basis and sources of government authority; (2) the limits and requirements governing the exercise of authority; (3) supervisory and judicial mechanisms for addressing violations; and (4) the legal consequences of actions or decisions that exceed or abuse government authority. This framework was used to provide a systematic assessment of *ultra vires* actions by regional heads in the replacement of government officials and to formulate recommendations for strengthening administrative law and merit system-based State Civil Apparatus management.

RESULTS AND DISCUSSION

Results

Government Authority Regarding Ultra Vires Actions by Regional Heads in the Replacement of Officials

Authority (*bevoegdheid*) is the legal power (*rechtsmacht*) granted by statutory regulations to a government organ or official to act within the domain of public law. Thus, authority is essentially not merely a factual ability to act, but a juridical ability originating in law. Philipus M. Hadjon emphasizes the fundamental distinction between power, which is sociological and factual, and authority, which is normative and juridical. Thus, not every exercise of power constitutes authority, but every authority necessarily contains the power to act. Government officials may possess political or structural power, but if such power is not accompanied by a valid legal basis of authority, the resulting actions lack legal legitimacy.

The classical doctrine of state administrative law distinguishes three sources of the acquisition of authority, namely attribution as original authority granted directly by the Constitution or by law, delegation as the transfer of authority that shifts legal responsibility to the recipient, and mandate as the delegation of the implementation of authority in which ultimate responsibility remains with the mandator. These three sources of authority affirm that government authority is never without limits, because every authority carries the purpose for which it is granted (*doelmatigheid*) and is limited by a particular scope (*rechtsgebied*). Accordingly, the exercise of authority that deviates from its prescribed purpose may be qualified as an abuse of authority.

Departing from government authority in general, government authority in the context of regional government administration has a hierarchical character, as reflected in the position of regional heads, whose authority remains within the framework of supervision by higher levels of government. Ni'matul Huda affirms that, in a unitary state, regional autonomy does not mean absolute freedom from central government control, but remains subject to hierarchical supervision and development mechanisms.

The authority of regional heads in the replacement of officials originates, among other things, from Article 65 paragraph (1) letter a of Law Number 23 of 2014 concerning Regional Government (hereinafter referred to as the Regional Government Law), which states that:

"Regional heads have the duty: to lead the implementation of Government Affairs that are the authority of the Region based on statutory provisions and policies determined jointly with the DPRD."

This provision positions the regional head as the leader of the implementation of regional government affairs, as well as the Personnel Development Official, based on Article 1 number 5 of Law Number 5 of 2014 concerning the State Civil Apparatus (hereinafter referred to as the ASN Law), which states that:

"Personnel Development Official is an official who has the authority to determine the appointment, transfer, and dismissal of ASN Employees and ASN Management development in government agencies in accordance with statutory provisions."

The attributive authority of regional heads as Personnel Development Officials historically originated not only from Law Number 5 of 2014 concerning the State Civil Apparatus but also from the provisions of Law Number 23 of 2014 concerning Regional Government. However, Law Number 5 of 2014 was repealed and replaced by Law Number 20 of 2023 concerning the State Civil Apparatus. Therefore, references to Law Number 5 of 2014 in the subsequent analysis should be understood as referring to the legal framework applicable before the enactment of Law Number 20 of 2023, unless expressly stated otherwise. Law Number 20 of 2023 is currently the principal statutory framework governing ASN management.

Article 65 paragraph (2) of Law Number 23 of 2014 concerning Regional Government states that:

"In carrying out the duties as referred to in paragraph (1), regional heads and deputy regional heads are obliged to comply with all statutory provisions."

This provision demonstrates that every exercise of regional head authority, including authority relating to the appointment, transfer, and dismissal of state civil apparatus officials, must be based on the principle of legality and comply with statutory provisions. This obligation is consistent with the broader principle that ASN management must be implemented in accordance with the merit system and applicable statutory requirements. Under the current legal framework, Law Number 20 of 2023 concerning the State Civil Apparatus strengthens the merit system as a fundamental component of ASN management.

Therefore, the authority of regional heads in the appointment, transfer, and dismissal of officials is not entirely discretionary (*freies Ermessen*), but is constrained by statutory requirements (*gebonden bevoegdheid*) to the extent that the applicable law determines the conditions, procedures, purposes, and limits governing its exercise. The exercise of authority that deviates from these limits may be qualified as an *ultra vires* action because it is carried out outside or beyond the authority granted by law, thereby potentially giving rise to an authority defect (*bevoegdheidsgebrek*) and affecting the validity of the government administrative decisions issued.

The government's authority to correct potential *ultra vires* actions by regional heads in the replacement of officials is manifested through preventive and repressive control mechanisms. Historically, the preventive mechanism included Article 116 paragraph (1) of Law Number 5 of 2014, which prohibited Personnel Development Officials from replacing High Leadership Officials within two years from inauguration, subject to statutory exceptions and presidential approval. Because Law Number 5 of 2014 has since been repealed by Law Number 20 of 2023, this provision should be treated as part of the historical legal framework applicable before the current ASN regime took effect, rather than as a currently operative provision.

A similar form of preventive control exists in the electoral context through Article 71 paragraph (2) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, which prohibits regional heads from replacing officials during the period of six months before the determination of candidate pairs until the end of their term of office, unless they obtain written approval from the Minister of Home Affairs. The provision remains relevant as an electoral-law restriction on the exercise of personnel authority.

Under the former ASN regime, the State Civil Service Commission (KASN) was given supervisory authority over ASN management and the merit system. However, KASN's institutional role must now be treated as historical because Law Number 20 of 2023 repealed Law Number 5 of 2014 and transferred KASN's functions to the Ministry of PANRB and BKN. The transfer was subsequently implemented through the post-2023 institutional framework, including the transfer of merit-system oversight functions.

KASN's former recommendatory authority, although functioning as an early-detection instrument, did not provide direct coercive power to cancel regional head actions that had already become *ultra vires*. Under the current framework, therefore, the analysis should refer to the

institutions that now perform the relevant supervisory functions rather than treating KASN as a continuing institution. The current framework places significant functions concerning technical ASN management and merit-system supervision within BKN and the Ministry of PANRB.

As for the repressive channel, Enrico Simanjuntak argues that the examination of whether there is an element of abuse of authority or action outside the limits of government officials' authority falls within the competence of the State Administrative Court, which, since the enactment of Law Number 30 of 2014 concerning Government Administration, has authority to assess the validity of decisions and/or government actions in terms of authority, procedure, and substance.

A'an Efendi and Sudarsono affirm that government organs act *ultra vires* if they have no legal authority at all or act beyond the legal limits of the authority they possess. Thus, the issue of *ultra vires* in the replacement of officials must essentially be tested by examining the presence or absence of a valid legal basis for regional heads to take such actions at the relevant time, within the relevant territory, and with respect to the relevant subject matter.

The application of the *ultra vires* doctrine cannot be separated from the General Principles of Good Governance (AUPB), as codified in Article 10 paragraph (1) of Law Number 30 of 2014, which includes the principles of legal certainty, expediency, impartiality, accuracy, non-abuse of authority, openness, public interest, and good service.

Among these principles, the principles of legal certainty and non-abuse of authority have the closest relationship with the *ultra vires* doctrine because official replacement actions that exceed the limits of regional head authority may simultaneously implicate both principles. Furthermore, the principle of accuracy requires every personnel decision to be based on careful examination of the relevant facts, including the fulfillment of applicable position requirements. Thus, AUPB functions as an additional parameter for assessing the validity of regional head actions in the replacement of officials, even where such actions formally appear to be based on a valid source of authority.

It should also be emphasized that not every deviation in the exercise of regional head authority in the replacement of officials can automatically be qualified as an *ultra vires* action. Article 18 paragraph (1) of Law Number 30 of 2014 classifies abuse of authority into three forms, namely exceeding authority, mixing authority, and acting arbitrarily.

Exceeding authority occurs when a decision or action violates time limits, territorial limits, and/or contradicts the statutory regulations that form the basis of its authority; mixing authority occurs when a decision or action deviates from the purpose for which the authority was granted even though the substance remains within the scope of the authority; while acting arbitrarily occurs when a decision or action is taken without any legal authority at all.

Official replacement by regional heads without written approval from the Minister of Home Affairs during the prohibited period as stated in Article 71 paragraph (2) of the Regional Election Law, which states that:

"Governors or Deputy Governors, Regents or Deputy Regents, and Mayors or Deputy Mayors are prohibited from replacing officials 6 (six) months before the date of determination of candidate pairs until the end of the term of office unless they obtain written approval from the Minister."

Likewise, the appointment of officials who do not meet the applicable position requirements must be examined against the requirements established by the relevant regulations. Article 72 paragraph (1) of Government Regulation Number 11 of 2017 concerning Civil Servant Management, as amended by Government Regulation Number 17 of 2020, regulates requirements for appointment to Administrator Positions. Accordingly, the quoted provision should be checked against the amended text before being reproduced verbatim in the final manuscript. Government Regulation Number 11 of 2017 remains in force but has been amended by Government Regulation Number 17 of 2020.

Where the applicable provision establishes mandatory requirements and an appointment is made without satisfying those requirements, the action may constitute a violation of statutory limits. However, such a violation should not automatically be characterized as an *ultra vires* action without first establishing the relationship between the violated requirement and the source and scope of the Personnel Development Official's authority.

Where both forms of violation are established as exceeding statutory limits, they may be

categorized as exceeding authority because the deviation lies in the violation of normative limits expressly determined by the statutory regulations forming the basis of the regional head's authority, rather than in a deviation from the purpose of the authority as characteristic of mixing authority, and not in an action undertaken without any legal authority as characteristic of acting arbitrarily. The accuracy of this qualification is important because the juridical implications of each form of abuse of authority differ, as will be further elaborated in the discussion of legal consequences.

The *checks and balances* framework for regional head authority in the replacement of officials essentially involves several interrelated institutions and mechanisms. The President, as the holder of the highest authority in ASN policy, development, and management under the current ASN framework, exercises ultimate authority within the structure established by Law Number 20 of 2023. Article 26 of Law Number 20 of 2023 provides that the President, as the holder of governmental power, is the highest authority in ASN policy, professional development, and management, while delegating certain functions to ministries and/or institutions.

The Minister of Home Affairs plays a role as an administrative supervisor at the operational level through the authority to grant or refuse written approval for official replacement during the electoral period, as regulated in Article 71 paragraph (2) of the Regional Election Law. BKN, as the national institution responsible for technical ASN management functions, performs technical and administrative functions relating to ASN management, while the Ministry of PANRB performs functions relating to strategic policy and, under the current transition framework, merit-system oversight. The State Administrative Court performs the repressive judicial-control function over decisions and/or actions that have been issued or undertaken.

These mechanisms, when examined structurally, demonstrate a layered supervisory pattern, but one that has undergone significant institutional change since the enactment of Law Number 20 of 2023. Under the former framework, KASN occupied a distinct institutional position in merit-system supervision. Under the current framework, KASN's functions have been transferred to the Ministry of PANRB and BKN, while the post-2023 framework continues to develop in response to the Constitutional Court's requirement for an independent institution to oversee the merit system.

The President's and Minister of Home Affairs' approvals are *ex ante* and binding only in situations expressly regulated by statutory provisions, while BKN's technical functions are primarily oriented toward the implementation and control of ASN management policies. The Ministry of PANRB performs policy and supervisory functions within the current merit-system framework.

Under the former framework, KASN, although possessing a substantive supervisory mandate over the merit system, did not have the authority to directly cancel regional head decisions. Its recommendations therefore depended upon follow-up by the competent authority. Under the current framework, the institutional structure is different, and the analysis should no longer characterize KASN's former recommendatory role as the operative mechanism of merit-system supervision. The State Administrative Court, as a judicial-control mechanism, can exercise its function after a decision or action is challenged through the applicable legal mechanism, making judicial review inherently reactive rather than a substitute for preventive administrative supervision.

This condition demonstrates that the available *checks and balances* have historically not constituted a single, fully integrated supervisory system, but rather a collection of mechanisms operating at different points in time and in different legal contexts. The current framework continues to develop following the institutional transition brought about by Law Number 20 of 2023 and the subsequent regulations governing merit-system implementation.

The effectiveness of this government-authority framework can be observed from the concrete issues described in the background of this research, namely the practice of appointing State Civil Apparatus officials to positions without satisfying applicable position requirements. Such practices may occur following regional head elections, raising concerns regarding the prioritization of political considerations over legitimate competence and applicable merit-based requirements.

Sri Hartini and Tedi Sudrajat affirm that the appointment of ASN to positions not in

accordance with their rank constitutes a violation of the merit principle that may result in the nullity of the Appointment Decree *ex lege*. The earlier reference to Article 9 paragraph (2) of Law Number 5 of 2014 is retained only as historical context. The current statutory framework is Law Number 20 of 2023 concerning the State Civil Apparatus, which replaced Law Number 5 of 2014 and must govern the contemporary analysis of merit and political neutrality. Law Number 20 of 2023 is currently in force and expressly repealed Law Number 5 of 2014.

When examined based on the government-authority framework and *checks and balances* described above, this practice demonstrates a potential gap between legal norms and their implementation. The preventive control mechanism based on written approval from the Minister of Home Affairs under Article 71 paragraph (2) of the Regional Election Law is limited to official replacement actions occurring within the period of six months before the determination of candidate pairs until the end of the term of office. Actions occurring outside that period therefore require assessment through other applicable supervisory and judicial mechanisms.

Miftah Thoha refers to this condition as a form of political domination over the bureaucracy that contradicts the principle of apparatus professionalism and state administrative law, while Jimly Asshiddiqie affirms that limiting authority through law is a constitutional mechanism to prevent the abuse of power by state administrators, which ideally operates structurally and does not depend solely on the initiative of an aggrieved party.

This condition demonstrates that the government-authority framework concerning *ultra vires* actions by regional heads in the replacement of officials is distributed across several mechanisms and legal regimes. Its effectiveness depends on the interaction between preventive administrative controls, merit-system supervision, electoral-law restrictions, and judicial review. The framework therefore should not be characterized simply as a single reactive mechanism, particularly following the institutional changes introduced by Law Number 20 of 2023.

Based on the entire description above, government authority to control *ultra vires* actions by regional heads in the replacement of officials is available within a *checks and balances* framework involving the President, the Minister of Home Affairs, BKN, the Ministry of PANRB, and the State Administrative Court, with the institutional configuration having changed following the repeal of Law Number 5 of 2014. Preventive supervision remains subject to specific statutory conditions, including the electoral restriction in Article 71 paragraph (2) of the Regional Election Law, while repressive supervision becomes relevant after a decision or action has occurred and is challenged through the applicable legal mechanism.

Discussion

Legal Consequences of Ultra Vires Actions by Regional Heads in the Replacement of Officials

The legal consequences of *ultra vires* actions by regional heads in the replacement of officials are essentially subject to the provisions of Article 70 of Law Number 30 of 2014 concerning Government Administration, which regulates the consequences of decisions and/or actions made by government bodies or officials that exceed authority. Article 70 paragraph (2) of the Government Administration Law further provides that decisions and/or actions that are declared invalid do not bind the parties from the time they are established and that the legal consequences arising from them are considered to have been restored to the position before the decision and/or action was made. Because Article 70 uses the statutory terminology of "invalid" (*tidak sah*), doctrinal distinctions between "invalid," "void," "void *ab initio*," and "voidable" must be made carefully rather than treated as automatic synonyms. Law Number 30 of 2014 remains in force, although it has been amended by subsequent legislation.

A voidable decision is, in principle, a decision that remains legally effective until there is a legal action that cancels or revokes it. Thus, even if the decision contains a legal defect, the decision may continue to produce legal consequences as long as it has not been canceled through an available legal mechanism. This concept is closely related to the principle of *praesumptio iustae causa*, namely the principle that considers a government decision or action valid until it is canceled by the competent authority or a court through the applicable legal mechanism. Efendi and Sudarsono (2023) explain that, based on this principle, government administrative decisions remain valid and may be implemented until they are declared invalid or void through the prescribed legal mechanisms. Thus, the existence of a legal defect does not necessarily eliminate

the operative validity of a decision where the legal system continues to recognize the decision as effective until cancellation.

The distinction between voidable decisions and void *ab initio* decisions is fundamental in determining the legal consequences of regional head actions. Voidable decisions essentially retain legal existence until cancellation, whereas void *ab initio* decisions are doctrinally considered never to have had legal existence from the beginning. In the context of government administrative decisions, the concept of void *ab initio* has the consequence that the decision cannot serve as a valid basis for creating legal rights or obligations because it is regarded as having lacked legal validity from the outset. Administrative law literature also demonstrates that officials' actions carried out outside the limits of their authority (*ultra vires*) may have different characteristics from decisions that contain only procedural defects or administrative errors committed within the scope of the official's authority (Efendi & Sudarsono, 2024). For doctrinal precision, this manuscript uses "invalid" (*tidak sah*) as the statutory terminology of Article 70 of Law Number 30 of 2014, while "void *ab initio*" is used as a doctrinal characterization for a fundamental absence of authority, and "voidable" refers to a decision that continues to have legal effect until annulled. These categories are therefore analytically distinguished rather than treated as automatic synonyms (Efendi & Sudarsono, 2024).

The proposition that government-organ decisions are, in principle, considered valid until cancellation is rooted in the principle of *praesumptio iustae causa*. This principle serves to provide legal certainty in government administration because government decisions cannot automatically be considered invalid merely because a party alleges that the decision contains an error. Efendi and Sudarsono (2023) explain that this principle places government administrative decisions in a position of remaining valid until cancellation through a decision of the competent official or a State Administrative Court ruling. Therefore, a lawsuit against an administrative decision does not, in principle, automatically suspend the validity or enforceability of that decision.

In a more specific sense, void *ab initio* decisions differ from voidable decisions. Void *ab initio* decisions are considered never to have existed from the beginning and therefore cannot validly serve as a source of rights and obligations. This consequence differs from that of voidable decisions, which remain effective until canceled. Efendi and Sudarsono (2023) emphasize that the differences among "invalid," "void," "void *ab initio*," and "voidable" are not merely terminological but involve different juridical consequences for the validity of decisions and the legal consequences arising from them.

Actions or decisions originating from *ultra vires* actions can be construed as actions carried out outside the jurisdiction or legal limits of government officials' authority. The *ultra vires* doctrine essentially concerns actions of government organs carried out without authority or beyond the authority granted by law. Efendi et al. (2023) explain that *ultra vires* actions relate to actions of government organs that fall outside the limits of their authority, including violations of time limits, territorial limits, and statutory regulations. In the context of Indonesian administrative law, this construction is directly related to Articles 17 and 18 of the Government Administration Law concerning the prohibition of abuse of authority and the classification of abuse of authority.

Thus, if a regional head carries out the appointment, transfer, or dismissal of officials without a valid legal basis of authority or uses the authority they possess for purposes that deviate from applicable legal provisions, such actions may be examined as *ultra vires* actions. The consequences are not limited to administrative errors but may also concern the validity of the decisions issued. In this context, it is necessary to distinguish between defects occurring within the scope of authority and actions that were, from the outset, undertaken without authority or beyond the authority granted by law. This distinction helps determine whether the decision in question is more appropriately qualified as voidable or, doctrinally, void *ab initio* (Efendi & Sudarsono, 2024).

In line with this construction, A'an Efendi and Sudarsono (2023) identify a conceptual issue in the relationship between the *ultra vires* doctrine and Article 70 of the Government Administration Law. According to them, *ultra vires* actions doctrinally have the consequence of being void *ab initio* because such actions are carried out outside the limits of authority, whereas Article 70 of the Government Administration Law uses the statutory terminology "invalid." This

difference demonstrates a conceptual issue regarding the appropriate form of nullity applicable to decisions arising from *ultra vires* actions. Thus, analysis of the legal consequences of *ultra vires* actions should not rely solely on the term "invalid," but should examine systematically the nature of the authority defect and its juridical consequences (Efendi & Sudarsono, 2024).

The application of this doctrine in judicial practice can be observed through the Surabaya State Administrative Court Decision Number 58/G/2009/PTUN.SBY, as analyzed by (Efendi & Sudarsono, 2024). This case concerns a personnel decision issued by an official who allegedly lacked a legal basis of authority. In administrative-law doctrine, decisions issued by officials who have absolutely no authority may have different characteristics from decisions issued by authorized officials but containing procedural defects. This distinction is relevant to determining whether a decision should be canceled or considered, as a matter of doctrine, never to have had legal existence from the beginning.

These considerations demonstrate the importance of the principle of legality in reviewing government administrative decisions. The State Administrative Court does not merely assess whether a decision satisfies formal procedural requirements; it may also assess whether the decision was issued by an official possessing the requisite authority and whether that authority was exercised in accordance with its legal purpose and limits. In this context, the principle of *praesumptio iustae causa* remains important because administrative decisions are, in principle, treated as valid until canceled through a valid legal mechanism (Efendi & Sudarsono, 2024).

Personnel-dispute patterns that potentially contain *ultra vires* elements are also found within the jurisdiction of the Ambon State Administrative Court, which covers the Maluku Islands, including Buru Island. The Supreme Court decision directory records the South Buru Regent as the Personnel Development Official as the defendant in a number of personnel cases, including Ambon State Administrative Court Decision Number 7/G/2021/PTUN.ABN, Number 8/G/2021/PTUN.ABN, and Number 9/G/2021/PTUN.ABN, which were registered and decided simultaneously on July 26, 2021, as well as Decision Number 12/G/2023/PTUN.ABN, filed by Drs. Samdar Borut, M.Si., and decided on August 1, 2023, with the lawsuit declared inadmissible. However, as emphasized in this manuscript, the *posita* and legal reasoning of each case should be traced through the complete copies of the decisions before being used as a basis for drawing substantive conclusions regarding *ultra vires* actions.

In connection with the concrete issue examined in this research, a decision appointing officials who do not meet the applicable position requirements needs to be analyzed from the perspectives of authority, procedure, and substance. If the objective requirements established by statutory regulations constitute mandatory requirements for occupying a particular position, an appointment made without satisfying those requirements may indicate a substantive legal defect in the decision. However, academically, categorization as *ultra vires* must first be established through an analysis of the source of authority, the limits of authority, the applicable position requirements, and the relationship between the defect in those requirements and the authority of the Personnel Development Official. This approach is more appropriate than automatically treating every violation of position requirements as an *ultra vires* action (Efendi & Sudarsono, 2024).

If, based on juridical analysis, it is proven that the appointment decision was issued outside the limits of authority granted by law, the decision may be constructed as an invalid decision and may have the consequences determined by Article 70 of the Government Administration Law. However, if the decision was issued by an official who indeed possesses the requisite authority but contains a violation of particular requirements or procedures, further analysis is necessary to determine whether the defect results in the decision being voidable or, doctrinally, void *ab initio*. This distinction is important because voidable decisions, in principle, remain effective until canceled, whereas void *ab initio* decisions are doctrinally regarded as having lacked legal validity from the beginning (Efendi & Sudarsono, 2024).

In addition to administrative-law consequences, *ultra vires* actions by regional heads in the replacement of officials carried out in an electoral context may have consequences under statutory provisions governing Regional Elections. Article 71 of Law Number 10 of 2016 regulates the prohibition on governors, deputy governors, regents, deputy regents, mayors, and deputy mayors replacing officials during a specified period before the determination of candidate pairs

until the end of their term of office, unless they obtain written approval from the Minister. Bawaslu explains that this provision is intended to prevent the abuse of regional head authority as Personnel Development Officials for political interests in the Regional Election process. Recent studies of regional bureaucratic politicization likewise indicate that personnel decisions around electoral competition may place ASN neutrality and bureaucratic professionalism at risk (Abidin et al., 2025; Wiraganti et al., 2025).

Violation of the prohibition on the replacement of officials in the Regional Election context may have cumulative consequences. Article 71 of the Regional Election Law connects such violations with consequences for candidacy and criminal sanctions as regulated in related provisions. Bawaslu also explains that violations of the prohibition on official replacement may be processed as Regional Election violations and may carry administrative and criminal consequences. Therefore, when official replacement actions are carried out in an electoral context and satisfy the elements of a violation of Article 71, the legal consequences are not confined to the realm of government administrative law but may extend to electoral and criminal law.

The legal consequences of *ultra vires* actions also directly affect the legal status of ASN who are the objects of the replacement decision. If an appointment or transfer decision is declared invalid or canceled through an applicable legal mechanism, the legal position of the official who obtained the position on the basis of that decision must be adjusted in accordance with the legal consequences of the cancellation. Conversely, if the decision is declared valid or has not been canceled, the principle of *praesumptio iustae causa* generally maintains the operative validity of the decision. Therefore, employment status cannot be determined solely on the basis of a claim that a decision constitutes an *ultra vires* action, but must be determined through the competent legal mechanisms (Efendi & Sudarsono, 2023).

Philipus M. Hadjon and administrative-law scholars, in principle, place the principle of legality as the principal instrument for controlling government actions. Within this framework, review of regional head actions through the State Administrative Court becomes an important instrument for ensuring that the exercise of authority does not deviate from the limits established by law. The judicial mechanism also provides legal protection to ASN who are adversely affected by appointment, transfer, or dismissal decisions suspected of containing authority defects. The existence of this review mechanism simultaneously ensures that government power remains within the framework of the rule of law.

The gap between legal norms limiting regional head authority and factual practices of appointment and replacement of officials demonstrates that the issue of *ultra vires* is not related only to the formal validity of a decision but also to the effectiveness of supervision over the exercise of authority. In the Regional Election context, Bawaslu specifically identifies the risk of abuse of regional head positions as Personnel Development Officials through official replacement for political interests. This demonstrates that the effectiveness of norms limiting authority depends substantially on consistent supervision and law enforcement against violations.

Thus, the legal consequences of *ultra vires* actions by regional heads in the replacement of officials must be analyzed in layers. First, it must be determined whether the regional head or Personnel Development Official possesses authority to issue the decision. Second, it must be analyzed whether that authority was exercised in accordance with the limits, procedures, and purposes established by statutory regulations. Third, the type of legal defect and its consequences must be determined, including whether the decision is voidable or, doctrinally, void *ab initio*. Fourth, if the replacement of officials is carried out during a period or in a context governed by Regional Election provisions, the possibility of sanctions under those provisions must also be analyzed. With this construction, *ultra vires* actions by regional heads are not merely administrative violations but legal issues that may affect the validity of decisions, ASN employment status, legal protection, and the integrity of regional government administration.

The weaknesses of the regulation are specifically reflected in two fundamental issues, namely: 1) Under the former ASN framework, KASN's supervisory authority over merit-system violations was primarily recommendatory and was not equipped with direct executory power, so follow-up on its recommendations depended on the competent authorities. Because KASN's functions have since been transferred to the Ministry of PANRB and BKN, this point should now be presented as a historical weakness of the pre-2023 framework rather than as a description of

the current institutional arrangement. 2) The requirement for written approval from the Minister of Home Affairs under Article 71 paragraph (2) of the Regional Election Law applies specifically to the period of six months before the determination of candidate pairs until the end of the term of office. Consequently, that provision does not itself establish preventive supervision over every personnel action undertaken by regional heads outside the specified electoral period.

Thus, the legal consequences of *ultra vires* actions by regional heads in the replacement of officials are essentially multilayered, including the potential invalidity of government administrative decisions, the potential imposition of administrative and criminal sanctions in the electoral context, and legal uncertainty concerning the employment status of ASN who are the objects of such decisions. Enforcement therefore requires coordination among the State Administrative Court, BKN, the Ministry of PANRB, the Ministry of Home Affairs, and the relevant electoral institutions within their respective statutory competences.

The legal consequences of *ultra vires* actions by regional heads in the replacement of officials, although normatively regulated through the Government Administration Law, the Regional Election Law, and the doctrine of the State Administrative Court as illustrated by the Surabaya State Administrative Court Decision Number 58/G/2009/PTUN.SBY, have not necessarily guaranteed legal certainty for ASN in every case. This is because judicial enforcement generally depends upon the availability and use of the applicable legal remedies by an aggrieved party, while administrative supervision depends on the exercise of statutory functions by the President, the Minister of Home Affairs, BKN, the Ministry of PANRB, and other competent institutions.

CONCLUSION

This research shows that supervision over the replacement of officials by regional heads that is alleged to be *ultra vires* has historically faced limitations even though it has been regulated through administrative and judicial supervisory mechanisms involving the President, the Minister of Home Affairs, BKN, KASN under the former framework, and the State Administrative Court. The limitations of preventive supervision, which applies only under certain statutory conditions, mean that potentially *ultra vires* actions may still occur and may subsequently require correction through repressive mechanisms after decisions are issued. Such actions may give rise to legal consequences in the form of authority defects (*bevoegdheidsgebrek*) that affect the validity of administrative decisions, the employment status of ASN, and the legal accountability of regional heads. Based on the *ultra vires* doctrine and the theory of authority, decisions issued with fundamental authority defects may, as a matter of doctrine, be characterized as void *ab initio*. However, because Article 70 of Law Number 30 of 2014 uses the statutory terminology "invalid," the precise juridical consequence must be determined through the applicable legal mechanism rather than assumed solely from the *ultra vires* characterization. Law Number 20 of 2023 has also fundamentally changed the institutional framework of ASN management by repealing Law Number 5 of 2014 and transferring functions previously exercised by KASN to the Ministry of PANRB and BKN, while subsequent developments have introduced additional requirements concerning independent merit-system oversight.

Therefore, strengthening supervision over regional head authority and improving the regulatory framework governing government administration remain important for providing legal certainty concerning the consequences of *ultra vires* actions. Under the current framework, strengthening preventive supervision over the replacement of officials by regional heads should be pursued through clearer coordination among the President, the Ministry of Home Affairs, BKN, the Ministry of PANRB, and the relevant judicial and electoral institutions, together with effective implementation of the merit-system framework under Law Number 20 of 2023 and its implementing regulations. Furthermore, Law Number 30 of 2014 concerning Government Administration could be further clarified regarding the relationship between statutory invalidity under Article 70 and the doctrinal concepts of void *ab initio* and voidable decisions arising from authority defects. Such clarification would contribute to legal certainty, consistency in the application of administrative law, and more effective legal protection for state civil apparatus.

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AUTHOR CONTRIBUTION STATEMENT

All authors contributed to the conceptualization of the research, development of the legal framework, analysis of statutory provisions and relevant cases, interpretation of findings, and preparation of the manuscript. All authors participated in reviewing and revising the manuscript critically and approved the final version for publication.

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