

Regional People's Representative Council (DPRD): Executive or Legislative Institution

Mukarto Siswoyo^a, ^aAssociate Professor in the State Administration Study Program, Faculty of Social and Political Sciences, Universitas Swadaya Gunung Djati Cirebon, Indonesia, Email: mukartosiswoyougj@gmail.com

Based on Law Number 23 of 2014 regarding Regional Government, the Regional People's Representative Council (DPRD) is a regional people's representative institution domiciled as an element of regional government administration. This council has the function of forming Regional Regulations. The function of establishing local regulations according to Law Number 22 of 1999 and Law Number 32 of 2004 regarding Regional Government is called the legislative function. This study will discuss the position of DPRD in Indonesia and the legislative function of the DPRD. Is the DPRD an executive or a legislative institution in the regions? Is the DPRD's legislative function the same as the function of Regional Regulation Formation? These questions will be analysed based on the theory of separation of power between the legislative institution, executive institution and the judiciary.

Keywords: *Separation of Power, Position of DPRD, Legislative Institution.*

Introduction

The era of reformation that went along with the fall of Soeharto's reign on May 21, 1997 has brought many significant changes in the administration of the state and the Indonesian government. One of the significant changes is up to four amendments to the 1945 Constitution of the Republic of Indonesia. In the third amendment, a change was made to the membership composition of the People's Consultative Assembly (MPR) which was originally mono-cameral (one chamber) consisting only of the House of Representatives (DPR), then it was changed to bicameral (two rooms) consisting of the DPR and Regional Representative Council (DPD). This is the same as in the United States, in which the Congress also adheres to bicameral, which consists of the House of Representatives and the Senate.

According to Article 69 of Law Number 17 of 2014 concerning the MPR, DPR, and DPRD or DPD or MD3 Law, the DPR/House of Representatives in Indonesia has three functions, the legislative, budget and supervisory function. The legislative function establishes laws. This legislative function indicates that the DPR is a legislative institution.

Furthermore, in Article 18, point 3 of the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution), it is affirmed that the provincial, regency, and municipal governments have a Regional People's Representative Council (DPRD) whose members are elected through general elections. According to Law 2014 Number 17, the Provincial and Regency/City DPRD has three functions including the DPR, namely the legislative, budget, and supervisory functions. In contrast, according to Law 2014 Number 23 regarding Regional Government, the DPRD has three functions: the function of forming a Regional Regulation, budget and supervisory functions.

Regional Regulation, are a type of statutory regulation in Indonesia but differ in their hierarchy. According to Law 2011 Number 12 of 2011 regarding the Formation of Regulations, the types and hierarchy of laws and regulations consist of:

1. The 1945 Constitution of the Republic of Indonesia.
2. Decree of the People's Consultative Assembly.
3. Government Act/Regulation in Lieu of Law.
4. Government Regulations.
5. Presidential Regulation.
6. Provincial Regulation.
7. Regency/City Regional Regulation.

On the other hand, based on Law 2014 Number 23, the DPRD is a Regional People's Representative Council that is domiciled as an element of regional government. Regional government is the administration of government affairs by regional government and the DPRD according to the principle of autonomy and assistance tasks with the broadest principle of autonomy in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution.

Based on the above description, several questions arise relating to the position of the DPRD and its legislative function: Is the DPRD in Indonesia positioned as an executive or legislative institution? Is the legislative function the same as the function in the formation of Regional Regulation?

Literature Review

Separation of Power

The position of DPRD in Indonesia can be understood from the doctrine or principle of separation of power. This doctrine was first stated by John Locke (1632-1704) and Montesquieu (1689-1755). According to Locke, state power is divided into three powers, legislative, executive and federative power, each of which is separated from each other. Legislative power is the power to make regulations and laws, executive power is the power to implement laws and includes judicial power (Locke views prosecution as *uitvoering*, including the implementation of laws), and federative power, which includes all actions to maintain state security in relations to other countries such as creating alliances and others, which are today called foreign relations (Budiardjo, 2008).

A few decades later in 1748, the French philosopher Montesquieu further developed Locke's thought. Montesquieu divided governmental power into three branches, legislative, executive, and judicial power. In contrast to Locke who put judicial power into executive power, Montesquieu saw the Court's power (judicial) as an independent power. The power of foreign relation, which was previously referred to by Locke as federative power was then put into executive power (Budiardjo, 2008).

Montesquieu's teaching are later known by the name of *TriasPolitica*, which is the assumption that power consists of three kinds. First, legislative power or the power to make laws (according to new terminology often called the rule-making function). Second, the executive power, or the power of implementing laws (the rule-application function). Third, judicial power or power for adjudicate violation of law (the rule adjudication function). *TriasPolitica* is a normative principle which states that powers (function) should not be left to the same person to prevent abuse of power by the ruling party. Thus, the rights of citizens are more secure (Budiardjo, 2008).

According to Ivor Jennings (in Busroh & Busro, 1983), in principle separation of power has two meanings:

1. Material meaning, if there is a strict separation of powers between the legislature, executive, and judiciary, and consequently adheres to the teachings of Montesquieu's *TriasPolitica*.
2. Formal meaning, if there is a division of power that does not explicitly maintain separation.

Currently, the principle of separation of power in the material meaning is no longer adhered to in the legislative and executive fields. This is due to the fact that in reality in various countries, the main task of legislature to make laws has included the executive in making it. In contrast,

, in the judiciary field, this principle is generally to guarantee their freedom in making decisions in accordance with the principles of the rule of law (Busroh & Busro, 1983).

Wade & Phillips (in Busroh & Busro, 1983) suggest a way to determine whether the constitution of a country adheres to the principle of separation of power in a material or formal meaning by asking the following questions:

1. Are the same people or institutions part of both the legislative and executive institutions?
2. Is it the legislature controlling the executive, or the executive controlling the legislature?
3. Does the legislative institution carry out the executive function, or does the executive institution carry out the legislative function?
4. Are the same people or institutions part of the judiciary and the executive, or the judiciary and the legislature?
5. Does the executive or legislative branch control or influence the judiciary, or does the judiciary influence or control the executive or legislative?
6. Do the executive and judiciary, or the legislative and judiciary carry out the functions of the judiciary?

Questions 1 to 3 concern whether the relationship between the executive and legislative have a separation of power, and questions 4 to 6 relate to the existence of a free and impartial judiciary. If all of those questions receive a “yes” response, then the country adheres to the principle of separation of power in the formal meaning. On the contrary, if all answers are “no”, then it is clear that the country adheres to the TriasPolitica theory or the principle of separation of power in its material meaning (Busroh & Busro, 1983).

According to Entin (1990), the term "separation of power" does not appears anywhere in the constitution. Nevertheless, the division of federal authority amongst three distinct but interdependent branches is one of the defining features of the American governmental system.

With the amendment of the 1945 Constitution of the Republic of Indonesia (amendments I to IV), there has been a paradigm shift in the distribution of government power at the national level, from the paradigm of distribution of power to the paradigm of separation of power, following the TriasPolitica model from Montesquieu, though not completely. In the original 1945 Constitution, government power was centralised in the hands of the President, because he was the sole mandate of the MPR. Furthermore, it is also stated in the explanation of 1945 Constitution that: “Concentration of power and responsibility is upon The President” (Wasistiono, 2010).

In Article 1, point 2 of the 1945 Constitution of the Republic of Indonesia, the highest sovereignty of the Indonesian people lays in the hands of the Indonesian people. Thus, the

people are the ones who have sovereignty over the elements of state power, which then by the constitution, the legitimacy of its authority is given to state institutions as holders of power whose members are elected through democratic means by the people.

According to Suny (1978), separation of powers in its material meaning is the separation of power in the sense of the distribution of power being firmly maintained in state tasks which characteristically demonstrate the existence of the separation of powers into 3 parts: legislative, executive, and judiciary. In contrast,, separation of powers in its formal meaning occurs when the distribution of power is not firmly maintained .

The concept of separation of power in state administration is one of the key characteristics of modern constitutional state. This concept is the result of a long experience in which all powers that previously concentrated in one King or Queen, especially in countries that apply theocracy, which causes unrest and abuse of authority (Mahfud,2010).

In Indonesia, the division of the three legislative powers , executive, and judiciary is separated into the constitution. It is regulated in Article 24, point (1) and (2) of the 1945 Constitutions of the Republic of Indonesia. In the legislative field, there are three state institutions: Parliament, DPD, and MPR. The executive power is held by the president as the holder of the highest governmental authority, along with the institutional instruments that are under it. Judicial power is held by the Supreme Court and Constitutional Court, which in holding their power in order to uphold the law remain independent.

Executive, legislative, and judicial powers are strictly separate. Each branch will have its own personnel and there must not be a mixing of functions between the three. The purpose of the separation include running the control function, maintaining security, and carrying out the government's functions (Magill, 2000).

Legislative Institution

The function of legislation is the function of forming laws. This function is the main task of the people's representative institutions in the form of regulatory functions (Hadi, 2013). According to Asshiddiqie (2006), the legislative function has four activities (1) law-making initiative; (2) discussion of the draft law; (3) approval of the ratification of the draft law; and (4) the granting of binding agreements or ratifications of international agreements and other binding legal documents.

A legislative institution is a legislator body, or the institutions that create laws. Its members are considered to represent the people. Therefore, it is called the House of Representatives, or also

known as the Parliament (Budiardjo, 2008).

Executive Institution

Executive institution implements laws, and in daily life runs the wheel of government. In democratic countries, the executive institution usually consists of a leader of the state, such as a King or President, and their ministers. In a presidential government system, executive power is held by the President and assisted by Ministers, or commonly referred to as Cabinet. Simply stated, the tasks of the executive institution include the implementation of laws that have been established by the legislature. In the development of the modern state, the authority of executive institutions is far broader than just implementing the Basic Law, even in the modern state the executive body has replaced the legislative body as the main policy maker (Budiardjo, 2008).

According to Manan (2001), government is the implementation of executive power or state administration. Government responsibility lies with the President. Therefore, the President has the authority to form a government, arrange a cabinet, and public officials (Yuda, 2010). In Article 13 point (1) and (2), it is stated that the limitation of executive power consists of the President having the right to appoint ambassadors and consuls. However, this authority is not absolute because in appointing these ambassadors and consuls, the President must pay attention to the consideration of House of Representatives.

The presidential system adopted by Indonesia ideally provides broad powers for the President to carry out his executive duties, but this great power cannot also be used arbitrarily for his personal interests. Two constitutional boundaries that can be used as a reason to limit the executive power of the president include the limitations of prerogative rights and the principle of separation of powers (Prabandani, 2018).

Judiciary Institution

According to Indarti and Farida (2007), judicial power is the power of the judiciary to keep laws, regulations, and other legal provisions to be strictly adhered to, with the consequences of imposing sanctions on any violations of laws and making fair decision on civil disputes submitted to Court.

The role and function carried out by the Constitutional Court in maintaining the orderly implementation of the functions and duties of state institutions, especially the executive and legislative, has strategic interests. However, a high level of sensitivity related to the authority of the Constitutional Court is considered to have the potential to hamper the implementation

of activities by other branches of power which can reduce the level of independence of the Constitutional Court (Mahfud,2010).

Research Method

This study is conducted using a qualitative method. Qualitative research is a method for exploring and understanding the meaning that is ascribed to social or humanitarian problems by a number of individuals or groups of people (Creswell, 2014).

The data in this study are obtained from the results of literature studies from various written and internet sources. Data analysis is performed through data reduction, data display, verification, and conclusion drawing. The validity test is completed through triangulation by checking, rechecking, and crosschecking the collected data .

Result and Discussion

The position of DPRD in Indonesia has a long story which can be traced in relation to the as four laws about Regional Government, namely Law 1974 Number 5 , Law 1999 Number 22 o, Law 2004 Number 32 , and Law 2014 Number 23.

During the era of the New Order , DPRD has been an element of Regional Government. As stated in Law 1974 Number 5 , regarding the main points of Regional Government which affirmed that Regional Government consists of Regional Head and DPRD. Thus, during the era of the New Order , DPRD along with Regional Head was positioned as the regional executive institution. However, similar to the central level of DPR , DPRD during the era of the New Order is no more than a 'yes man' or 'logo institution.'. This is due to the fact that they always agree to the policy from Regional Head. This caused the DPRD to not have the strength to control the Regional Head, even though during the era of the New Order the Regional Head is nominated and chosen by the DPRD.

After the era of Reformation, some changes have been made to laws regarding the position of DPRD. Based on Law 1999 Number 22 regarding Regional Government, the position of DPRD is separate from Regional Government and returned to its original function, which is the Regional Legislative Institution with the same positioning degree as Regional Government (Regional Executive Institution). The relationship between DPRD and the Regional Government consists of a partnership.

Law 1999 number 22 has caused major changes in the relationship between the Regional Head and the DPRD. The implication is that regional power n is no longer centralised to the Regional Head (executive) but has shifted to the DPRD (legislative). The working relationship

between the two institutions during the New Order by de facto was hierarchical, in which the position of DPRD was under the authority of the Regional Head, even though by de jure both were in equal position as elements of Regional Government. However, based on Law 1999 Number 22, the relationship between Regional Head and DPRD is equal. The implication is that regional decision or policy making during the New Order era can be done quickly and unilaterally by the Regional Head. On the other hand, in the Reformation era, it is relatively difficult to do so as the Regional Head has to first dialogue and negotiate with DPRD (Ratnawati, 2005).

The DPRD has a dual position, namely as the people's representative and as an element of regional government. As the people's representative, DPRD members are elected through a general election process with the function of accommodating people's aspirations, aggregating their interests, and fighting for people's interests in the governance and state process. As an element of regional government organisers, the DPRD is a partner that equals the Regional Head (Wasistiono, 2010).

The Desire to make the DPRD as a Regional Legislative Institution

[Text missing] (Parliament) so that the DPRD has a separate and independent position towards the executive based on the desire to strengthen the check and balance mechanism in the administration of regional government. This is due to the fact that during the New Order era the independence of the DPRD tends to be limited, so that the check and balance function cannot run optimally. In order to perform the check and balance function optimally, the DPRD must be placed as a regional legislative institution, and its member should be treated as state officials, similar to member of the DPR. One of the arguments is that like DPR members are also directly elected by their people and hence, they also have a representative function as possessed by the DPR.

The DPRD, which during the New Order era did not have any strength, at the beginning of the Reformation era had a greater authority based on Law 1999 Number 22. It is as if they were revengeful for the power of the DPRD during the New Order Era, since it was mostly subordinated by the executive (Regional Head). Thus, at the beginning of the Reformation era, they showed their power as the Regional Legislative Institution. This led to some negative excesses, including some regional heads to be impeached by the DPRD.

The number of negative excesses caused Law 1999 Number 22 to not last long. After five years of promulgation, the law was revised and replaced with Law 2004 Number 32 regarding Regional Government. According to this law, the DPRD is no longer positioned as the Regional Legislative Institution, but as an institution that represents local people and elements of regional government, along with the regional government.

According to Wasistiono (2010), there are differences in the weight of the balance of power between the Regional Government and the DPRD in the three laws that rule the Regional Government. Law 1974 Number 5 provides a more dominant role in Regional Government (executive heavy). In contrast, Law 1999 Number 22 provides a more dominant role in the DPRD (legislative heavy). However, Law 2004 Number 32 provides a balanced role between the composition of government (central, provincial, and district/city) as a vertical balance, as well as a balance between the Regional Head and the DPRD as a horizontal balance (equilibrium decentralisation).

Law 2004 Number 32 was then replaced by Law 2014 Number 23 regarding Regional Government. According to this law, the DPRD is a regional people's representative institution that is positioned as an element of regional government administrators. The DPRD has three functions: the formation of regional regulations, budgets, and supervision.

Based on the description above, according to Law 1999 Number 22, DPRD is positioned as a Regional Legislative Institution with one of the legislative functions. However, according to Law 2004 Number 32, the DPRD is no longer positioned as a Regional Legislative Institution, but as an institution representing local people and elements of regional government, along with the regional government. The legislative function of DPRD was later corrected by Law 2014 Number 23 to become a function of the formation of regional regulation. The function of this regional regulation is carried out by:

1. Discussion with the regent/mayor and approval or disapproval of the draft of regency/city regulation.
2. Submitting a proposal for a regency/city regulation.
3. Arranging a program to form District/City Regional Regulation together with regents/mayors.

According to Manan (1995), regional regulation is determined by the Regional Head with the approval of the DPRD. Regional regulation is formed by regional governments with the aim of ruling and managing their own households. The regulation is a law (at the regional level). This equalisation is based on the nature that binds all people in a particular territorial area, and the process of its formation uses consensual principles in the regional legislative institution, which is the representation of all people in a particular region, as well as the stipulations and promulgations of those that are similar to the treatment of law-making.

Although regional regulation is law, the hierarchy is different from the Law. Both regional regulation and the Law are similar types of statutory regulations in Indonesia, with different hierarchy and scope. According to Law 2011 Number 12 regarding the Formation of Regulations, the position of the Law is in the first hierarchy, while the position of the Provincial

Regulation is in the sixth hierarchy while the Regency/City Regulations is in the seventh hierarchy. Thus, the regional regulation is not the same as the law because the position of regional regulation is beneath the Law. Another difference is that the regional regulation only applies to a particular region (local level), while the Law applies nationally throughout Indonesia (national level).

On the other hand, the legislative function actually has different meaning regarding the function of regional regulation making. According to the Dictionary of Indonesian Law, legislation is defined as the process of making laws, while the legislature means the power to form and enact laws. Legislative institution has the power to form and enact laws.

The legislative function is only owned by the legislative body, namely the DPR because it has the authority to form and enact laws. Therefore, the legislative function owned by the DPR based on Law 1999 Number 22 and Law 2004 Number 32 is inappropriate, because the DPRD does not have the power to form and enact laws, but only the power to form and enact regional regulations. Based on Law 2011 Number 12 2011, regional regulation is different from the hierarchy in Law. In addition, the Law applies nationally throughout Indonesia, while regional regulation only applies in a particular region.

In the context of Indonesia as a unitary state, the regions do not have their own legislative and judicial institutions which are separate from the parliamentary (legislative) and judiciary (judicial) institutions at the national/central level. The delegation of authority to regions is carried out only within the area of government (executive) power, not in the field of legislative and judicial powers. In a federal state, a region or state has its own parliamentary (legislative) and judiciary (judicial) institution. On the other hand, in a unitary state, autonomous regions do not have legislative and judicial powers. In this context, the position of DPRD as a regional legislative institution (parliament) which has legislative power as well as the DPR lacks solid foundation.

The understanding of the status and position of DPRD should also pay attention to the mandate of the constitution (1945 Constitution). In this instance, there are different views about the mandate of the constitution, especially in interpreting certain provisions in the 1945 Constitution. According to Article 18 point (3) of the 1945 Constitution, DPRD members are elected through general elections, so that the members naturally have a representation function, and therefore should be treated as a regional parliament. On the other hand, based on Article 18 point (2) and (6) of the 1945 Constitution, regional government is the head of the region and the DPRD. Therefore, the DPRD should be an element of the regional administration (executive). By using the understanding of these articles, thoughts arise regarding regional government administrators. Can the DPRD carry out the function of representation? Does the obstacle in carrying out the representation and check and balance function lie in its status and

position, or is it due to the limited capacity of the DPRD and its members? Many studies show that the lack of support and resources owned by the DPRD and its members are major factors which make it difficult for them to carry out a check and balance function.

The DPRD is a people's representative rather than a legislative institution. Until now, the term people's representative has often been replaced by the term legislative, or vice versa. Indeed, the people's representative institutions develop in two stages: initially, in the definition of law-maker. According to that definition, representative institutions have been known in England since the 14th century. However, the legislative role has only completely developed during the last five centuries. The term and understanding refers more to the classic understanding of state power, which is divided into three groups, legislative power, executive power, and judicial power (Deaodatus, 2005).

The understanding of the status and position of DPRD should also pay attention to experience or practice in other countries. In many countries, people's representative institutions are usually referred to as Councils, which are regulatory rather than legislative institutions. The Council does not have legislative authority as the House of Representatives but only has authority to make regulations applicable in its territory. If this practice is seen as a benchmark, then the position of the DPRD in Indonesia cannot be compared to DPR as a legislative institution. Moreover, in the practise of decentralisation in Indonesia, the authority surrendered to the regions is the authority of the government, rather than the authority of legislative and judiciary institutions.

Conclusion

Based on the description in the discussion, it can be concluded that the DPRD in Indonesia is no longer positioned as a regional legislative institution according to Law 2014 Number 23. According to the Law, the DPRD is a regional people's representative institution that is positioned as an element of regional government administrators. Thus, the DPRD is an executive institution rather than a regional legislative institution.

Based on Law 2014 Number 23, the DPRD has a function of forming a regional regulation, rather than the function of legislation (the formation of Law). The term 'functions of the formation of regional regulation' according to the Law is more appropriate than the term 'function of legislation' according to Law 1999 Number 22 and Law 2004 Number 32. The legislative function is only owned by the DPR, rather than the DPRD.



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