

Characteristics of Institutional Regional People's and Their Synergies with House of Representatives and Regional Representative Council in the State System in Indonesia

Supriyadi

Doctor of Administrative Law from Law Faculty Brawijaya University, Lecturer in Administrative Law in Master of Law Program Postgraduate, Merdeka University Malang, East Java, Indonesia

Abstract

On the way institutional parliament, various legislations were never valid and in force, providing status and characteristics in this area representative institutions that have various consequences of the position and functions to be carried out of the institution. However, from a variety of such status, one thing that can not be released is a function to accommodate the aspirations of the people and put it in the form of laws, namely the local regulations. In addition to his position as local people's representative institutions, these institutions actually can work together with the people's representative institutions at the central level either by the House of Representatives and the Regional Representatives Council.

Keywords: Regional People's Representative Assembly, The House of Representatives and the Regional Representatives Council, Synergies constitutional

The representative body of the people or the legislature region

Law No. 32 of 2004 gives the status of Parliament as an institution representative of the people of the region and is one element of the regional administration. In a general explanation of the Act, the position of Parliament and are placed equal partnership with regional heads. What is meant is the equivalent of between parliament and the head of the region have equal status and equal, there is no higher or conversely, the lower of the two.

Previously, Act No. 22 of 1999 gives the status of Parliament as a legislative body area. In his explanation did not provide any further information about this institution. Moreover, Act No. 22 of 2003 and Act No. 27 of 2009 issued was to regulate one of these institutions, it refers to and is returned to Parliament as stipulated in the Act of 1945.

What's interesting about the status of Parliament above is placed on one side as a representative institution of the people and the area on the other side as a legislative body area. Granting such status is only a difference of terms and mention who currently do not have differences in meaning or indeed have the particular consequences?

In General Explanation of Law No. 22 of 2003, used the mention of the representative body of the people (the region) to the House (Regions) whose job it is to fight for the aspirations of the people in order to uphold the values of democracy, justice and welfare. While the explanation of Article 66 paragraph (1) and Article 82 paragraph (1) mentioned DPRD (Provincial and Kabupaten / City) is an institution that became a vehicle for democracy in local governance.

In 1945 of the Constitution prior to the change, in its explanation of Article 18 otherwise, "in areas which are autonomous local representative bodies to be held, because in any area of government will be hinged on the basis of consent".

From some references above, it can be concluded that the local people's representative institutions, more emphasis on the relationship between the body that represents the interests of the people on the one hand and the people who are represented on the other. In addition, the presence of the agency, charging members is done through the election not by appointment.

While the bodies or legislation related to the function of the legislature, as presented by Hans Kelsen, "the creation of general norms by special organs, namely by the so-called legislative bodies" and this function in the modern concept entrusted to an institution called representatives of the people (the representative of the people). In the doctrine of separation of powers that is followed by most of the state of democracy and constitutional monarchy through its constitution, the creation of general norms, belongs to the legislative body.

By naming different, Asshiddiqie call it a parliamentary body to implement the legislative function as one of the functions that are considered essential, even considered as the main function, namely the function of institutions that determine the making of laws (Act on national and local regulations at the regional level), Although in its development since the middle of the 20th century up to now been a shift in the role of the legislature to the executive in the preparation and establishment of an Act to be the joint work between the legislators (Parliament) and the executive (government), even the executive more dominant influence and its role as a source initiative.

Therefore, monitoring of the performance of administrators in carrying out duties as the third function

of the parliament in this modern era, it is considered much more important than the legislative function that many people questioned, as said George B. Galloway, "not legislation, but control of administration is becoming the primary function of the modern Congress".

Of opinion as described the above, it can be concluded that the legislature areas, more emphasis on the duties and functions of the authority, namely: forming local regulations both to the substance of the budget (budget function) or outside the budget (the legislative function) in addition to the supervisory function,

Organs of State or State Institutions

In the context of political, Parliament can be regarded as political intermediaries (political intermediary) so that its presence can be a place to receive input and feedback from various parties which may be multi-level, multi-actor and multi-sector. Members of Parliament no longer be representative of a particular political group, but representatives of all the people and other actors in local governance. Parliament as the representative body of the people as well as public institutions.

If given a broader sense, the Council under the provisions of the 1945 Constitution can be termed as a state organ, even Asshiddiqie rather extreme to enter Parliament as a state institution, because the definition of a state institution under the provisions of the 1945 Constitution interpreted broader than the notion of state institutions commonly understood in everyday conversation, that any organ or agency granted by the 1945 Constitution which does not include a category or enter as a private institution / society. However, in order to provide a thorough understanding, Asshiddiqie trying to classify a state organ or a state institution is based on the following criteria:

1) Based on the criteria of "the existence of the institution" and "function or authority", the state institutions can be grouped into three parts: first, a state institution whose existence is mentioned in the 1945 Constitution and the authority specified in the 1945 Constitution; second, the state agency whose existence is mentioned in the 1945 Constitution and its authority is not specified explicitly in the 1945 Constitution; Third, the state agency whose existence is not mentioned explicitly in the 1945 Constitution and its authority is not specified explicitly in 1945, but its existence has constitutional importance.

Grouping on the basis of these criteria, then there are 28 organs / state institutions or institutional legal subjects mentioned in the 1945 Constitution, including the Provincial Council, district and city.

2) Based on the criteria of "function" (is the main / primary or auxiliary / secondary in the system of state power) that impact on the legal treatment of the people who occupy positions in the agency, including the degree protokolernya and "hierarchy" (the source of normative / legal forms that determine authority), the state agency can be grouped as follows:

a) by function, organ / state institutions mentioned in 1945 there whose main function / primer and there that are supporting / secondary (auxiliary). To understand between them, then the existence of state institutions can be grouped into 3 (three) domains (domains), namely:

(1) The executive authority or executive (administrators, bestuurzorg) as President and Vice President who is an integral institution of the presidency - while TNI, Police, Minister of State although mentioned in the 1945 Constitution can not be equated with the President and Vice President;

(2) legislative power and control functions, such as: the House of Representatives, the Assembly, CPC;

(3) the judicial authority or judicial functions, such as: the Supreme Court, the Constitutional Court, as well as the Judicial Commission (KY), just position KY can not be equated with the Supreme Court and the Constitutional Court.

On this basis, although there are some state institutions that are independent (such as KPK, KY, KPI, INTRAC, the Commission, etc) but the state institutions continue to have the primary function, since it reflects the power branches, the main state (ie: Legislature, executive and judiciary)

b) Based on the hierarchy, the organ / state institutions mentioned in 1945 can be grouped into three levels, namely:

(1) The State Agency (there are 7 state institutions);

(2) Institute of State:

(a) Obtain the authority of the 1945 Constitution;

(b) Sources of authority from the 1945 Constitution.

Both can be aligned, not higher and not lower, only difference is that one can be so much more powerful role;

3) Organ constitution / state agencies that source their authority comes from the regulator or regulatory forming under the law or the organs / body region or state institutions that are / is domiciled in the area.

At this third level, Parliament placed as organ / body region or state institutions that are / is domiciled in the area.

In general, when the discussion concerns the power or authority of the state or government organization, always relate to the Trias Politica Montesquieu delivered to classify into the legislative, executive,

and yudisil, including discussions relating to the authority in the organization of local government. However, if the Parliament can be placed as a legislative body which has the task of forming or make regulations (areas) that are commonly understood by most people? In this context, to consider the formulation of Article 18 paragraph (6) of the 1945 Constitution that "the regional government the right to set local regulations and other regulations to implement the autonomy and duty of assistance".

While the so-called local governance in the region and it covers the head of Parliament, so that the authority to establish or regional regulations, as the embodiment of the legislative function under the authority of the two institutions, namely the head of the regional authority and Parliament that can not be done by one of the parties.

Even between the two institutions is when faced with the question of who a greater role in the formation of local regulations, it is clear in the fact that the head of the region with a device that dominates, based on considerations logical that the information, expertise, and resources or other support facilities are owned and controlled by local governments, so that local governments are more aware of what, when, and how things should be arranged with local regulations.

Moreover, if from the side of the Parliament only required to be a member of the board sufficiently with the minimum of high school graduates, in charge for the period of 5 years, would not be reliable to expect a contribution of more than Parliament compared with the ability and resources owned by the local government in terms of the process of formation of local regulations ,

Thus, the status of Parliament more appropriately placed as a representative institution rakyat regions with legislative function (rulemaking area together with the head of the region), the function of budgeting (budget), and monitoring functions. Therefore, among these three functions, the council should focus on the implementation of the supervisory function in its function as a control process includes the establishment of regional regulation rather than prioritize its role as an initiator.

Asshiddiqie somewhat extreme even stated that "it should have primary legislative function (primary legislator) remains in the hands of the head of local government, while the legislative function of that of the Parliament as the only legislative function is secondary or auxiliary".

However, that does not mean Parliament waived the right of initiative to prepare a draft local regulations. These rights still have to be a commitment, especially for issues that are considered important and urgent for the sake of the people they represent.

By 1945, the results of the second amendment, in particular in Article 18 paragraph (1) states that "the Republic of Indonesia is divided into provincial regions and these provincial regions shall be divided into districts and cities, which each province, district and town have local government, which is regulated by law ". While in article 18 paragraph (2), paragraph (5) and (6) of the 1945 Constitution was formulated some authority that owned by local governments, namely:

1. organize and manage their own affairs in accordance with the principle of autonomy and duty of assistance (article 18 paragraph 2 of the 1945 Constitution);
2. running the widest possible autonomy, except for governmental affairs determined by law as the affairs of the Central Government (Article 18, paragraph 5 of the 1945 Constitution);
3. establish regional regulations and other regulations to implement the autonomy and duty of assistance (Article 18, paragraph 6 of the 1945 Constitution).

The need for clarity is what local government authority stipulated in the 1945 Constitution of the above? If you pay attention to the formulation of Article 18 paragraph (1) of the 1945 Constitution the phrase "... each province, district and it has regional governance ...", in simple language can be said that in the Indonesian region name of the region called "provincial" , "county" and "city" there is or there is a "local governance", then associated with the formulation of Article 18 paragraph (3) of the 1945 Constitution which states that "the provincial government, district, and the city has a regional council that anggota- members are elected through general elections ", and in article 18 paragraph (4) of the 1945 Constitution states that" Governors, Regents and Mayors as the respective heads of the provincial government, district, and municipal elected democratically ", it can be concluded that in the government The area consists of two institutional legal subjects, namely: the first is the Governor, Regent, and Mayor successively as head of the provincial government, district, and city and the second is the Provincial Parliament, District and Municipal as the people's representative assembly area.

Thus, in the area there are three functions of the regional administration run by:

- a. local government as a whole combination of regional head (Governor, Regent, and Mayor) with DPRD (Provincial, District and Municipal);
- c. Governors, Regents and Mayors;
- d. Provincial Parliament, District and Municipal.

With the constitutional reform which is marked by the 1945 changes, of course it will affect the system of governance both at national and regional levels. The relationship between Parliament and the local government is also changing. Therefore, efforts to increase the capacity of Parliament also have to consider the

shift in the relationship.

Commitment to ethics enforcement

To improve the performance of regional autonomy organizer elements from both the local government and Parliament need to institutionalize and develop the ethics of public administration. This work is done in order to reform the management of government, especially local governance, namely a comprehensive change to the structure and governance process for the improvement of operational performance in the region in order to establish the management of local government sustainable, it is necessary to note the following three pillars, namely:

First, management reform mission must be translated into clear and understandable by all levels of leadership; second, the formation of character for all the actors involved in the governance of public management through effective communication. Good interpersonal communication results will bear confidence (trust) that is needed to build the character of the organization; Third, the implementation of public management changes should be implemented in a timely manner or at least that momentum must be created.

However, it must be recognized that developing and instituting ethics including the code of conduct is not something easy. Therefore, it is necessary to build the infrastructure first ethics conducted at four levels, namely: first, build commitment, especially at the leadership level that is expected to be a basic orientation / referral for public administrators in developing basic ethical values; second, increase control mainly on three aspects: the legal framework enabling independent investigation and prosecution, effective accountability mechanisms, as well as the involvement and public scrutiny. hird, for the implementation of ethics and code of conduct can run effectively, it is necessary guidance mainly on three aspects, namely: equity commitment from political leaders, an understanding of the code of conduct which includes values and standards, as well as socialization activities such professionals through educational activities and exercise. Fourth, the need for management restructuring mainly on two aspects: the stability of public services based on effective human resources and effective coordination by a body specifically tasked with overseeing the implementation of ethics.

Among the four-level commitment (political) to enforce ethics and code of conduct is the most important foundation. In other words, the commitment (politics) is the foundation for and the effectiveness of other elements of the ethics infrastructure. In the embodiment, the commitment (political) initially expressed in the form of words of the leaders in its level, an official statement, the various forms of official announcement even in the form of policy and at the level of the ultimate need for real action as proof that they will meet societal expectations.

Characteristics of the institutional synergy with the Parliament and the DPR and DPD

With the enactment of Law No. 5 of 1974, due to the release of Act No. 22 of 1999 and then replaced again by Act No. 32 of 2004, the Parliament was not part of the local government, but part of the regional government authorities to implement regional autonomy particularly in terms of the authority to regulate conducted jointly with the head of the region for the formation of local regulations.

Thus, the Central Government can only do surveillance (repressive and functional) of the substructure into the path of his subordinates in the executive, namely local government. Therefore, the presence of Parliament is rather different from the local government or a more narrowly regional head, because of the presence of Parliament is done through political parties that won the elections, not because of government interference in the formation, so that the presence of Parliament guaranteed by law and is not determined by the type of legal products below. If any provision of government regulation or type of regulation under it is to set further on the administrative aspects of Parliament who do not respect the substantive functions and tasks. On that ground, the accountability of parliament submitted directly to the people they represent.

Therefore, it is unfortunate when the release of Government Regulation No. 79 Year 2005 on Guidelines for Development and Control of Regional administration Article 45 gives authority to the Minister of the Interior to cancel the appointment of regional heads, deputy head of the region, and legislators. This is done to optimize the function of supervision over the Government. Various opinions were similar deplore the release of government regulation, since Parliament is an institution representative of the people who where members are elected by the people of the electoral mechanism involving political parties.

Thus, responsibility for implementation of duties was not submitted to the Minister of the Interior as part of the executive, but to the people who choose it. In addition, the dismissal of members of Parliament have also been regulated in Law Number 32 of 2004 in particular article 55 paragraph (3) which determine the reasons for the dismissal of members of Parliament, among other things: death, in violation of the code of ethics, etc.

The decision of the Minister of the Interior for the determination of the membership of Parliament, is under the authority of an administrative nature, but that does not mean the Minister of the Interior has the authority substantive to dismiss members of parliament without going through the mechanism / proposal faction or political party, because it is the authority for the dismissal of members of Parliament are in fractions which is

an extension of the political parties, in case of violation of the code of ethics and obligations in his duties as a board member. Therefore, the article in Government Regulation No. 79 Year 2005 needs to be done for judicial (judicial review).

Parliament as an institution representative of the people of the region can work together with state institutions at the central level, such as members of Parliament who represent constituencies according to the constituency, while the fabric with DPD can be made by members who represent the area of origin of the DPD members. For members of the House may utilize a representative office members of Parliament in the area or office party representatives at the local level, such as the board of directors territory or governing board area, while for DPD members can build a house aspirations for the people of the area, which can be used Parliament to synergize in order regional development and improving the welfare of local communities.

1998 reform to encourage national political agenda driven to move faster. One impact is the change konsruksi representative body of the people in line with changes to the 1945 Constitution the Assembly no longer positioned as the highest institution of the sovereign people and the existence of the institution consists of DPR and DPD are both elected directly by the people. Particularly for DPD, the first time the 128 members elected to represent the region / territory of 32 provinces. The presence of DPD one suggestion is to balance the representation gap, between the representatives of the Java-Bali and outside the region.

If members of the House are calculated based on the number of people, then of course the representative of the selection of Java-Bali will be more dominant than outside the region (in the 2004 elections as many as 312 members of Parliament from the constituency in the Java-Bali and the 238 members of Parliament from the outside Java-Bali), DPD is expected to offset the representation gap. Nonetheless, the concept of bicameral it feels responsible, because the authority of the Council which is not as big as the Parliament, even if they have to fight harder to win the trust of the people than to be a member of Parliament.

BIBLIOGRAPHY

- Asshiddiqie, Jimly. 2006. *Hukum Tata Negara dan Pilar-pilar Demokrasi*, Edisi Revisi Cetakan Pertama, Konstitusi Press, Jakarta
- , 2006. *Sengketa Kewenangan Antar Lembaga Negara*, Cetakan Kedua, Konstitusi Press, Jakarta
- Attamimi, A. Hamid S. 1993. *Hukum tentang Peraturan Perundang-undangan dan Peraturan Kebijakan (Hukum Tata Pengaturan)*, Naskah Pidato, Disampaikan dalam pidato purna bakti guru besar tetap Fakultas Hukum Universitas Indonesia pada tanggal 20 September 1993, Jakarta
- Christopher Polliet dan Geert Bouckaert, 2000, *Public Management Reform a Comparative Analysis*, Oxford University Press, Oxford
- Djojosoekarto, Agung, et.al. 2004. *Akuntabilitas Publik dan Fungsi Pengawasan DPRD*, Cetakan Pertama, Sekretariat Nasional ADEKSI – Konrad Adenauer Stiftung, Jakarta
- Djojosoekarto, Agung. 2004. *Dinamika dan kapasitas DPRD dalam Tata Pemerintahan Demokratis*, Cetakan Pertama, Konrad Adenauer Stiftung, Jakarta
- Djojosoekarto, Agung, et.al. 2004. *Menjadi Wakil Rakyat dalam Tata Demokrasi Baru*, Cet. I, Sekretariat Nasional ADEKSI, Konrad Adenauer Stiftung, Jakarta
- Kelsen, Hans. 1973, *General Theory of Law and State*, Russell & Russell, New York
- Ole Ingstrup dan Paul Crookal, 1998, *The Three Pillars of Public Management Secrets of Sustained Success*, McGill-Queen's University press, Montreal & Kingston

Peraturan Perundang-undangan

- Undang-Undang Nomor 22 Tahun 2003 tentang Susunan dan Kedudukan Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah
- Undang-Undang Nomor 27 Tahun 2009 tentang Susunan dan Kedudukan Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah
- Undang- Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah
- Undang-Undang Nomor 12 Tahun 2008 tentang Perubahan atas Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah
- Undang-Undang Nomor 10 Tahun 2008 tentang Pemilihan Umum Anggota DPR, DPD, dan DPRD

Surat Kabar

- Sidik Pramono, 2006, *Menunggu Perwakilan dengan Pertanggungjawaban*, Harian Umum Kompas, Rabu 17 Mei 2006
- Windoro Adi, 2006, *Rumah Aspirasi Upaya Menyambung Komunikasi*, Harian Umum Kompas, Kamis 27 April 2006