

Limited Scope of Authority of Local House of Representative in the Area of Local Budgeting¹

Juajir Sumardi¹ Aminuddin Ilmar² Naswar³ Achmad⁴

1. Professor on Legal Science, Faculty of Law Hasanuddin University and the Research Leader on the PUPT Program
2. Professor on Legal Science, Faculty of Law Hasanuddin University and Researcher of the PUPT Program
3. Lecturer at Faculty of Law Hasanuddin University, PhD Student Postgraduate, Hasanuddin University, and Researcher of the PUPT Program
4. Lecturer at Faculty of Law Hasanuddin University and Researcher of the PUPT Program

Abstract

This research is to reveal the nature of the functions of the local house of representative (called DPRD) in budgeting process. This means to provide clarity about the limited scope of local house of representative authority in budgeting activities. The research results reveal two things: first, the function of local house of representative is essentially to control fiscal. It means that budgeting discussion activities conducted by DPRD is to ensure compliance: (1) designing KUA, PPAS, and RKPD; and (2) the draft of the local regulation and KUA, PPAS, as well as RKPD, with the limited scope of discussion is following: (a) policy of revenue, expenditure, and financing; (b) program priorities and limited (plafond) budget for each program; and (c) the allocation of the budget and program of activities. Second, the discussion of the draft of the local regulation on budget revenue and spending areas (APBD) technically implemented by the Commission must reach all level of activity and type of expenditure. The scope of such discussion is not only potentially causes budgetary transactions practice, but also exceeds the limit of the Law No. 23 of 2014 and its implementation in the forms of the the Governmental decree No. 58 , 2005 and the Menteri of Internal Affairs Decree No. 59, 2007.

Keywords: Authority of DPRD, Local Budgeting.

1. Introduction

The presence of the local government autonomously is a legal consequence of implementation of decentralization system in the frame of the unitary State of the Republic of Indonesia (called NKRI). The system delegates authority comes from the people in accordance with the doctrine of sovereignty. This means that the authority given to the local government is not the original power without the attribute but it is legalized power.² The process of legalization and the granting powers that already legalized is done through the Constitution (UUD 1945 NRI) and the Law concerning Local Government.

The handover of the government authority brings the consequences of the existence of rights and obligations for each local government to organize such authority in accordance with the intention and purpose of it. The intention and the aim is to accelerate community welfare through public services improvement.³ The mention of public service shows that the nature of the authority of Government is to serve the community. The Governance is conducted to serve the community. This condition shows that the authority of the government is to absorb budget than in making money.⁴ It can be said that it is needed bigger financial resources to the run such kind of this authority .

Therefore, in simultaneous with the territorial decentralization (political decentralization), it is applied also the fiscal decentralization. The fiscal decentralization is intended to submit to the local government authority to manage financial resources for the establishment of local governance. Territorial and fiscal decentralization would like two sides of one coin and cannot be segregated. The authority of financial resources management is implemented to support the improvement of public services in order to speed up the realization of the welfare society.

To achieve it, it is needed some policies to govern local financial management to be used as a reference in utilizing the financial resources in order to fund the establishment functions of the local governance.

¹ This Paper is actually part of the Research Program on PUPT Project 2015. The granted research team are Professor Juajir Sumardi, Professor Aminuddin Ilmar, Naswar, and Achmad, as team research leader and researchers, respectively. The research is funded by DP2M Ministry of Culture and Education Republik Indonesia (Now: State Ministry of Research, Technology, and Higher Education). We would like to thank to some person Dr. Maskun for his contribution in the process of data management. We would like to thank also to Prof. Dr. Ir. Sudirman for his kindness as a head of LP2M Hasanuddin University.

² See Jimly Asshiddiqie, *the Constitution and Constitutionalism of Indonesia*, the Secretariat-General and Clerk of the Constitutional Court of Indonesia, Jakarta, 2005, pp. 274 and 282.

³ See the explanatory of the Law No. 23 of 2014.

⁴ See Bagir Manan, *Welcome of the Autonomous Region*, the Centre of Legal Studies FH-UII, Yogyakarta, 2001, p. 40.

The policy is constructed in what is known as ' budget income and expenditure area (APBD). APBD is an annual financial plan defined by local regulations, called PERDA.¹ This local budgeting is drawn up by the local government as its exclusive authority. It is only the local government has the authority to draw up the budget for the benefit of the local government. However, to keep the policy formulation and the implementation of the budget, DPRD is needed in order to keep that the corridors of the purpose of acceleration welfare society is on track.

As a part of local governance, DPRD is provided the functions of budgeting control as formulated by the Law No. 23 of 2014. This formulation is also able to find out in the Law No. 17 of 2014. Those Laws' perspective show that DPRD has a function that is associated with the activities of government financial plan discussion to obtain approval or not approval. In terms of financial design has been approved, it is enacted as financial revenue (APBD) through the local regulation, called Perda. On the contrary, if it is not approved then the local government will run with the previous (last year) budget in the context of understanding of the nature of the quantity.²

The conception of the budget function of DPRD will rise an interpretation that the pattern of relations between the Local Government and DPRD in the context of budgeting discussion is similar to the discussion of the draft regulation in the context of the legislation function of DPRD. In this position, the interpretation addresses that if the draft Regulation on non-APBD is studied till the substance detail, the budget revenue (APBD) discussion will also conduct similarly to non-APBD. This kind of the interpretation as mentioned above is practiced in the process of budgeting discussion of the local governance. It is also in accordance with the Law No. 17 of 2003, which determined that the annual financial plan approved by DPRD must detail up to organizational units, functions, programs, activities, and types of budgeting.³

If the conception of functional budget of DPRD is interpreted and practiced as priorly explained, it impresses overloaded-meaning. Membership of DPRD is not selected based on the merit system, but rather politically through the general election mechanism. Therefore, they do not have the ability of qualified technical aspects regarding the micro-budget aspects as if budget planners in local government. The question then how they can deal with it? As it is discussed that DPRD has function to control the budget, not to draft the budget. In this situation, it is ridiculous. Indeed, the situation as mentioned will different when DPRD conduct his function to control the implementation of the budget. DPRD in this case will be supported some data by the Audit Board of the Republic of Indonesia, called BPK.

Authority of DPRD in discussing the local-budget is rated 'overdose'. This fact can be seen from the available time span is relatively short. DPRD has only a time of not more than three months in discussing the budget. So, it is impossible to conduct it in detail. In the process of discussing of the budget as calculated, there is a common phenomenon that the occurrence of practices for the sake of budget transactions takes place outside the interests of the community. This general phenomenon is happening without being able to be prevented due to the magnitude of DPRD authority in the discussion of the budget. The Local Government seems helpless to face its ' maneuver ' partners, except prepared with the risk of blocking until the refusal of financial plan by DPRD. The situation will then create disharmony between the Local Government and DPRD.

These kinds of phenomenon will detriment community interest and dismiss the mission of APBD to welfare the community. To realign the APBD mission, therefore, it is needed clarity about the limited scope of DPRD authority to conduct its function as a budget function. This effort can be done through various ways including interpretation of some provisions of relevant legislation. Beside the interpretation, it will also reconstruct in practice the DPRD authority in budget discussion. This study will be associated with the development of the present law that is characterized by the Decision of the Constitutional Court No. 35/PUU-XI/2013 on subject testing to the Law No. 27 of 2009 and the Law No. 17 of 2003 against the UUD 1945 NRI.

Based on the background described above, the focus of the research is (1) to explain the limited scope of DPRD authority in the deliberations of the local annual financial plan put forward by the local government; and (2) to explain the practice of it from the angle of DPRD.

2. Methods

The research is classified as a combination research that combines between normative and empirical legal research. The foresearch's focus is the limited scope of DPRD authority in the process of budgeting and its practice from the DPRD point of views. The applied research data is secondary data obtained through the study of documents or references either the primary legal materials, secondary legal materials, or tertiary legal materials.

¹ See Article 1 the Law No. 23 of 2014

² Article 20 paragraph (6) of the Law No. 17 of 2003 states that ' If DPRD does not approve the Draft Local Regulations on..., to finance the needs of the local Government every month, the Local Government can carry out a number of extended spending budgets of previous financial year '.

³ See Article 20 paragraph (5) of the Law No. 17 of 2003.

3. Finding and Discussion

3.1. The Limited Scope of DPRD Authority to Discuss the Local Budgeting Plan Documents

Basically, there is 3 (three) steps of local budgeting process as explained above. However, not all process require involvement of DPRD, except in the process the discussion of KUA, PPAS particular in the forum preliminary talk of the Draft APBD (called RAPBD), and discussion of the Draft Regulation of APBD.

3.1.1. Preliminary Talks

The preliminary talk is a forum to discuss the draft of KUA and PPAS that compiled by TAPD.¹ The creation of two budgeting document provided by TAPD affirms that the function of drafting budget is the early stages of the cycle of APB. Article 1 point 6 of the Government Decree No. 58 of 2005 expresses that the making of APBD is parts (sub-systems) of the budgeting functions of the local government. The making of APBD is drawn as the budgeting functions of the local government, not DPRD. If DPRD gets involved in the planning process of APBD, it does not mean that DPRD plays his budgeting function as local governments function to draft KUA and PPAS. The involvement of DPRD in this context is to discuss the draft of KUA and PPAS made by TAPD.

3.1.2 Discussion of the Draft General Policy of APBD

As a first step of the making APBD, TAPD compiles a draft planning document called KUA. According to the Internal Affairs Ministry Decree (Permendagri) No. 59 of 2007, KUA's plan designs local macro economic condition, assumption of the drafting of APBD, local revenue and local budgeting policies, local financial policies, and strategical achievement of concrete measures in achieving the target.²

Discussion of the design of KUA by DPRD is conducted through its tools (agencies) that formed special to task budget. The agency is called budget agency (Banggar). The task of Banggar, according to article 55 of the Governmental Decree No. 16 of 2010³, is determined, as follows: (a) to provide advice and opinions to the head of the local government concerning preparation APBD's draft at least 5 (five) months before APBD is enacted; (b) to conduct consultations represented by its members to the related Commission to obtain suggestions in order to make discussion of the KUA and PPAS design; (c) to provide advice and opinions to the head of the local government in preparing the draft of PERDA concerning APBD changes and implementation of APBD; (d) to do the completeness of the draft of PERDA concerning APBD and the draft of PERDA concerning implementation of APBD based on the results of the evaluation of the Minister of the Internal Affairs DPRD in the level province and the evaluation of the Governor for DPRD in the level of district and cities along TAPD; (e) to conduct a joint discussion of the draft of KUA and PPAS submitted by the head of the local government; and (f) to advise DPRD leadership in the making DPRD's budget.

Of the 6 (six) tasks, the discussion of the draft KUA is referred to point (a), (b), and (e). Out of (a), (b), and (e), then, only point (e) is governed in the Governmental Decree No. 58 of 2005 as elaborated in the Law No. 32 of 2004 (now: Act No. 23 of 2014). There are anomalies, of course, in this condition where the tasks of Banggar do not apply the legal regime of local governance. It applies the legal regime of DPRD as an institution. As we known, Banggar is DPRD's agencies (sub-system of DPRD). The tasks of Banggar shall be governed by legal regime of the local governance in casu the Governmental Decree No. 58 of 2005, which the Governmental Decree is the implemented legislation of the the Law No. 32 of 2004 (now: Act No. 23 of 2014). In terms of it, the Governmental Decree No. 58 of 2005 shall be a main source of Banggar's tasks, not the Governmental Decree No. 16 of 2010, which is a derivative of the Law No. 27 of 2009 (now: the Law No. 17 of 2014). This is accordance with G.J. Wolhoff point of views. He stipulates that theoretically the guidance of the local government in a unitary state constitutively is a legal regime of local governance in casu the Law No. 23 of 2014 and its derivative regulation.⁴

Regardless of that anomaly as mentioned above, it is pivotal to be understood that the submission of DPRD points of view (points a) is done after Banggar consulted with relevant commission (point b). The submission is no later than 5 (five) months before enacting of APB, at least December 31. It means that it must be at the end of July until the draft of KUA is agreed by Banggar and TAPD as KUA.⁵ The points of view of DPRD formulates advice and opinion of DPRD to reflect the attitude of DPRD to design KUA. Whether the

¹Article 1 point 30 the Internal Affairs Ministry Decree (Permendagri) No. 21 of 2011 defines that TAPD is a team formed by decision of the head of the local government and led by the Secretary of the local government, which had the task of preparing and carrying out the policy of the head of the local government in the framework of the making of APBD. Its memberships consist of officials of regional planners, PPKD, and other officials in accordance with their needs.

²See Article 85 the Ministry of Internal Affairs Decree No. 59 of 2007.

³The Governmental Decree No. 16 of 2010 is derived from the Law No. 27 of 2009 which has been replaced by the Law No. 17 of 2014. The regulation of DPRD is governed by the Law No. 17 of 2014 has also been repealed and declared not valid by the Law No. 23 of 2014. Thus, the legal basis of the Governmental Decree No. 16 of 2010 is no longer based on the Law No. 17 of 2014, but rather on the the Law No. 23 of 2014.

⁴ See JimlyAsshiddiqie, *Subject of Laws in Indonesia*, the Secretariat-General and Clerk of the Constitutional Court of Indonesia, Jakarta, 2006, p. 92.

⁵See Article 87 paragraph (3) the Ministry of Internal Affairs Decree No. 59 of 2007.

design of KUA is agreed or/with no repairment/completion, of course, it depends on the process 'take and give' which take place between Banggar and TAPD. In terms of DPRD points of view is corrective, TAPD can do a repairment/completion as necessary.

The next question is that should any correction is delivered by Banggar must followed, received or acted upon by TAPD to be repairment or completeness of the KUA draft?. The answer to this question can be returned or it is up to the function of the discussion of KUA's draft conducted by KUA and TAPD. If it is meant that the budgeting function as conceived by the Law No. 23 of 2014, the answer will be affirmative with the understanding that a correction is delivered by Banggar in the form of DPRD points of view must be accommodated in the draft. If it is no, it would be no agreement. In this context, Banggar correction on KUA's Draft will be seen in its counter of KUA's draft. It can be said that this situation will be a little bit the same as the process of making PERDA, which an agreement is constellation results of political interests amongst the parties. Therefore, it is natural when the results of the KUA's draft discussion reflect existing political interests in DPRD.

It is different if the discussion draft of KUA conducted by Banggar is meant as a function of supervision. The supervision is to control budgeting plan formulated in the draft of KUA. In this situation, Banggar does not act as budgeting plan. It acts as a supervisor to control the local government as the compiler of the budget. In this regard, it is important to put forth that the discussion of the draft between KUA and TAPD will end to reach the draft of KUA to be KUA and will become reference for the local unit of working (SKPD) to plan the budget. Without consensus DPRD, the draft of KUA will never become KUA. The consequence of it, budgeting activities can be continued. Indeed, this consensus will different to DPRD's consensus on the draft of non-APBD.

It is very important to emphasize that DPRD does not boil down authority to make budgeting. As we known, the authority is a juridical institution to realize functions. It means that it attaches to that function.¹ The authority drawing up the budget is a juridical institution attached to the financial management function played by the local government. Therefore, only the local government can make up the budget. DPRD never make it of course. DPRD's position in this context acts as a supervisor to guard the making of the budget. However, it does not mean that DPRD should not at all convey the advice or opinion. According to the Governmental Decree No. 16 of 2010, Banggar as sub-system (an agency) of DPRD may provide advice and opinions in the form of DPRD points of view. The problem of the Decree is because it does not give sort of 'signs' related to delivery issues of DPRD's minds. In this context, it can be said that DPRD only ensures that the draft of KUA is made by the local government not side-tracked or deviate from the cornerstone of its drafting.

Banggar involvement in the process of budgeting does not make Banggar to be a budgeting planner to countervail KUA's draft with the format of DPRD points of view correctively. Banggar in this position acts only as a budgeting supervisor. Therefore, the manifestation of the budgeting supervision is not based on the DPRD preferention. It is based on a foundation of making KUA's draft itself.

From the perspective of the local government as the compiler of the budget, the legal basis of making KUA's draft is the work plan of the local government (RKPD). According to the Law No. 25 of 2004, RKPD is the basis of making APBD. Article 34 (1) and (2) the Governmental Decree No. 58 of 2005 jo article 83 (1) the Internal Affairs Ministry Decree No. 59 of 2007 stipulates that the making of APBD must base on RKPD and the annual guideline of making APBD enacted by the Minister of Internal Affairs. Those regulation as mentioned above are emphasized in the Law No. 23 of 2014 as the guideline of the local government constitutively to establish the local governance including to draft KUA.² Both RKPD and the annual guideline of making APBD enacted by the Minister of Internal Affairs are compassed to draft KUA. They become a clear benchmark. It is very important that the drafting of KUA does not deviate from the design planning activity that are outlined in RKPD and also the annual guideline of making APBD enacted by the Minister of Internal Affairs.

If so, understanding that can be taken next is that the making of KUA's draft must guarantee its substance consistently to its foundation of making it. To ensure it, it can be found in the Minister of Internal Affairs Decree No. 54 of 2010 through an instrument for controlling the implementation of the regional development plan conducted by the regional development planning Board (BAPPEDA). BAPPEDA will create supervision and monitoring activities, where the results are used to evaluate and ensure that the priorities and objectives of the annual development program, the plan of the local activities and local priority, as well as launched indicative work plan set out in the local government have been compiled into a draft of KUA, PPAS, and APBD.³ The Minister of Internal Affairs Decree further states that in terms of evaluation of supervision and monitoring activities do not accordance with, BAPPEDA is able to repair or to complete it.⁴ The problem arises

¹ Bagir Manan, *Theory and Political Constitution*, the Directorate General of Higher Education Department of National Education, Jakarta, 2001, p. 41.

² See Article 308 jo. Article 310 paragraph (1) of the Law no. 23 of 2014.

³ See Article 219 jo. Article 269 paragraph (2) of the Ministry of Internal Affairs Decree No. 54 of 2010.

⁴ See Article 220 paragraph (2) jo. Article 270 paragraph (2) of the Ministry of Internal Affairs Decree No. 54 of 2010.

then in what level repairment/completeness are made? In the level of RKPD or the draft of KUA, PPAS, and APBD. If referring to BAPPEDA function, the repairment must be done in the level of RKPD.

The analysis as mentioned above shows that the weakness of the Minister of Internal Affairs Decree No. 54 of 2010 relates to align between planning document and budgeting document. However, the essence of it that RKPD must be ascertained to be integrated into the budgeting document or made substantive guidelines in drawing up the draft of KUA, PPAS, and APBD. In other words, the essence of discussion of the draft of KUA conducted by Banggar is to deliver advice and opinions in the form of DPRD points of view and its substantive guideline (RKPD). This affirms that scope budgeting discussion conducted by Banggar related to the draft of KUA is limited by expected targets of the synchronization of KUA and RKPD.

Due to the discussion of the draft KUA is based on the guideline of APBD as enacted by the Ministry of Internal Affairs Decree No. 54 of 2010 annually, the guideline of APBD must be considered by TAPD in the process of drafting KUA. In terms of drafting APBD 2015, the used guideline is the Ministry of Internal Affairs Decree No. 37 of 2014. Substantively, it consists of: (a) the basic policy that contains synchronization between government and local government policies; (b) the principle and policy of drafting the budget of APBD in financial year; (c) technical aspects of drafting of APBD; and (d) other special things. The substantive of the Ministry of Internal Affairs Decree No. 37 of 2014 are able to become a guideline of drafting APBD as enacted by the Minister of Internal Affairs in order to be considered in the process of drafting APBD. The assertion in question, for example, is synchronization between government policies (RKP) and local government (RKPD). The synchronization is done to design of final draft of RKPD where the results of the Deliberation of planning national development (MUSRENBANGNAS) as input in the formulation of the final draft plan of RKPD.¹ In addition, to ensure that the results of MUSRENBANGNAS has been integrated into the final draft of RKPD, the enactment of RKPD in the level province is done after RKPD set out and RKPD in the level district/city is enacted after RKPD in the level province is enacted.² As long as APBD is based on RKPD that has been synchronized with RKP, APBD will not be deviated from substantive guidelines. Another assertion in the guidelines of drafting APBD is the guidelines of drafting APBD should be on related relevant legislation in particular in the field of state finance/local finance. So, the guideline of drafting APBD as enacted by the Minister of Internal Affairs is more direct. Therefore, it can be said that the substantive of the guideline of drafting APBD is RKPD. In other word, RKPD as a foundation of draft KUA and PPAS is to draft APBD.³

In terms of substantive guideline of the drafting KUA and PPAs, the most important things is the substances of KUA and PPAS connects each other. Therefore, the revenue target of KUA's draft is to know the projected income and its strategy to be done by the local government to reach it. Indeed, the strategy must be discussed by Banggar to decide the projected income as set out in KUA's draft and as long as the target is accordance with the RKPD's target. In addition, it is also explained that the target must be cover the financial projection in following fiscal year. The financial targets illustrate the estimated needs of funds either direct or indirectly expenses. One important note is the expenses target must be accordance with the KUA's draft as set out in RKPD. In this limitation can be said that Banggar allocates the budget either direct or indirectly expenses. The guideline of allocated budget must prioritize compulsory expenses such as official expenses, interest expenses, subsidies expenses, other expenses in the following year.

From the discussion of the allocation of funds, it can be expected that the budget will be deficit or surplus. In this context, Banggar discusses strategies of acceptance financing and financing expenditures listed in the draft of KUA. It also assesses consistency with the direction set out in RKPD. In the case of budgeting deficit, it must anticipate some policies that will have an impact on financial acceptance such as the reserve of the financial calculation in prior fiscal year (SILPA), the loan, and re-acceptance of the loan. Conversely, if the estimated budget is surplus, it should be anticipated occurrence policies that will have an impact on expenses such as the establishment of a reserve fund, the inclusion of capital (investment), the payment of the principal debt, and the loan.

Discussion of financing policy strategy by Banggar is made in conjunction with discussion of the strategy of allocating funds for SKPD either directly or indirectly expenses. Those funding reflect revenue targets and its strategy to optimalize the source of revenue. Simultaneously, Banggar will gain an overview of impending budget surplus or a deficit budget.

The conclusion can be drawn from the analysis above is:

- (a) the strategy of optimalization of revenue sources;
- (b) the strategy of allocating funds for expenses either directly or indirectly expenses;
- (c) the strategy of acceptance and expenditure financing.

It is important to note that in the context of the discussion of the draft KUA, it has not discussed about the

¹Article 125 the Ministry of Internal Affairs Decree No. 54 of 2010.

²Article 129 subsection (1) and (2) the Ministry of Internal Affairs Decree No. 54 of 2010.

³Article 129 paragraph (3) of the Ministry of Internal Affairs Decree No. 54 of 2010.

program priorities of SKPD. The discussion of the program priorities will be done when discussing the draft of PPAS.

3.3. Discussion of the Draft Priorities and Temporary Budgetary Plafond

In line with the Law No. 23 of 2014 jo. the Government Decree No. 58 of 2005 jo. the Ministry of Internal Affairs Decree No. 21 of 2011, DPRD (Banggar) has task to discuss the draft of PPAS joined with discussion of KUA's draft. Therefore, the filing of this planning budget document is also done simultaneously. The two are indeed interconnected substantively.

The substance of the draft PPAS consists of local development priorities associated with the target to be achieved including the program priorities of SKPD. The local development priorities is an answer to regional development goals in a statement containing a component program priorities or a combination of both. The local development priorities basically consists of higher selected program of SKPD (leading indicators) for the achievement of development goals target in year plan. Thus, the local development priorities specifically relates to get the target of local development.

The target of PPAS draft discussion conducted by Banggar to guarantee program priorities of SKPD has been compiled based on RKPD. It should be remembered, that the substance of RKPD contains the program priority for the planned year so as normative. The draft of PPAS should not include new priority programs that are not in RKPD. Another important thing is correlation PPAS to priority of program of SKPD and indicative finance as enacted by RKPD. This is direct expenses of SKPD. The most important thing that must be noted that the limited of budget does not beyond the indicative limited budgets enacted by SKPD. If it is beyond it, Banggar is able to give advice and opinion to DPRD to fix the temporary budget based on the indicative limited budget.

An adjustment of PPAS based on RKPD must be clear an indicator of it. The indicator is the performance targets to be achieved from each SKPD (direct expenses), not to DPRD as an institution. In this context, DPRD (DPRD) will assess whether performance targets stated in the draft of PPAS has been in accordance with the performance targets set out in RKPD for the same program priorities, not a new program priority which is not contained in RKPD. If the performance targets stated in accordance with RKPD, it can be agreed upon the direct expenses of SKPD and the agreement then become pivotal to discuss and agree on the allocation of funds for indirect expenses of SKPD. So, it is affirmed that expenses targets have only implicated from the allocation of funds either direct or indirect expenses.

The PPAS steps based on the indicative limited budget have an implication to allocate funds for indirect expenses of SKPD. Aligned with the direction of the revenue policies is set out in RKPD. Indeed, the allocated funds must be adjusted and calculated based on the availability of direct expenses of SKPD. Therefore, the discussion of DPRD regarding this matter should be attributed to its strategy of allocating funds for SKPD expenses and also financing policy in anticipation of the occurrence of a budget surplus or deficits. This is the reason why the discussion of the draft of KUA and PPAS must be done simultaneously. Based on the analysis as mentioned, it is clear to state that the discussion conducted by DPRD is to guarantee of conformity of the draft PPAS and RKPD, as followings: (a) the program priorities of SKPD; and (b) temporary budgetary plafond of each priority program of SKPD.

Meanwhile, in the context of the relationship between the draft of KUA and PPAS, DPRD ensures consistency of both to reflect from correlation: (a) the strategy of allocation funds for temporary budgetary plafond of each priority program of SKPD and indirect expenses of SKPD; and (b) the policy of financing with temporary budgetary plafond of each priority program of SKPD and indirect expenses of SKPD as an anticipation of the occurrence of a surplus or deficits budget.

Finally, the consensus between DPRD and DPRD in terms of drafting KUA and PPAS should reflect the suitability of inter-documents budget planning. It means that coherence amongst KUA, PPAS, and RKPD must be in line with. Before the draft of KUA and PPAS is discussed by DPRD, the local government has been seeking measures to ensure linkages and consistency with RKPD through the instruments of control and evaluation. It is also to ensure that the draft of KUA and PPAS have accordance with RKPD.

Such consistency is constantly maintained on the next process by drafting RKA-SKPD as part of drafting APBD. According to article 19 (4) of the Law No. 17 of 2003 states that RKA-SKPD is delivered by DPRD to be discussed in the preliminary draft of APBD. With the provisions of this legal regime based on the finances of the State, preliminary talks are held to discuss the draft of KUA, PPAS, and RKA-SKPD. Meanwhile, according to the legal regime of local governance in case the Law No. 23 of 2014 jo. The Government Decree No. 58 in 2005 jo the Ministry of Internal Affairs Decree No. 13 of 2006 as already changed some times, jo the Ministry of Internal Affairs Decree No. 21 in 2011, only the draft of KUA and PPAS can be discussed in forum of the preliminary talks in the presence of DPRD, whereas RKA-SKPD is based on the guideline of drafting RKA-SKPD post signature of memorandum of understanding between KUA and PPAS.

At this point, it looks that there is disharmony rule about local budgeting process between legal regime

of financial state and legal regime of the local governance. This condition, according to the researchers, is resolved based on the primacy of each legal regime. In addition, it is also resolved pursuant to the scope of each authority. If the Law No. 17 of 2013 governs matters relating to establishment of the local governance in the process of local budgeting. The Law must be excluded by reason of set without authority (*ultra-vires*). Thus, the rules about budgeting process should be promoted based on the Law No. 23 of 2014.

3.4. Discussion of Draft of Local Regulations Concerning APBD

In accordance with the legal regime of the primates of local governance as expressed above, the agreement between the the local government and DPRD on the draft of KUA and PPAS poured into the memorandum of understanding signed by both parties. On the basis of the memorandum of understanding, the head of the local government then delivers circulars about the guidelines for drafting RKA-SKPD as the guideline of the head of SKPD in drafting RKA-SKPD. the work plan and budget of the working units of the device area as a work device Unit head guideline areas in drawing

Compiled RKA-SKPD further will be communicated to head of PPKD to discuss further by TAPD. Discussion by TAPD is intended to elucidate the suitability amongst RKA-SKPD and KUA, PPAS, advanced forecast of budgeting which had been approved the previous fiscal year, other planning documents, products and performance indicators, target group activities, standard budget analysis, the standard unit price, minimum service standards, and synchronization programs and activities between RKA-SKPD.¹ Such a discussion is actually aiming to ensure that RKA-SKPD is arranged based KUA and PPAS agreed upon together between the local government and DPRD. The results of the study will become completed materials of RKA-SKPD to be compiled by PPKD to become the draft of PERDA concerning APBD. The draft will be delivered to DPRD to be discussed and approved to become Perda concerning APBD.

If so, there is no urgency of RKA-SKPD to be discussed in preliminary talks. Moreover, the Law No. 23 of 2014 and its implemented regulation in *casu* the Government Decree No. 58 of 2005 jo. the Ministry Internal Affairs Decree No. 13 of 2006 as amended several times until the Ministry Internal Affairs Decree No. 21 in 2011 do not reconstruct the discussion of RKA-SKPD in a preliminary talk. Even, in the Law No. 23 of 2014 jo. the Government Decree No. 16 of 2010 also does not found the discussion of it. Beside, the Law No. 17 Year 2013, reconstruction of discussion of RKA-SKPD in preliminary talk also governed in the Code of Conduct of DPRD. The Code od Conduct can be said to have set something beyond its primary rules, the Law No. 23 of 2014.² and also the Government Decree No. 16 in 2010.³ Both regulation govern not only tasks and authorities of DPRD, but also govern order to DPRD to regulate such things related to the tasks and authority of DPRD. In this respect, the code of conduct of DPRD has function as rules of implementation which are specifically.⁴ Therefore, the code of conduct should not be set something or create new duties and authorities outside prescribed by the Law and the Government Decree, or *ultra vires*.

If referring to legal regime of the local governance, RKA-SKPD shall not be discussed by DPRD in the preliminary talks forum. RKA-SKPD has already been analyzed, refined and compiled ' into the draft of PERDA concerning APBD to be discussed and approved to become PERDA concerning APBD. In the process of drafting PERDA concerning APBD, DPRD will be represented by one commission or other agencies formed by the meeting of the plenary (Special Committee).⁵ So, based on the Government Decree No. 4 of 2010, it is well known that something or someone that has direct connection to the head of local government or representative officials to draft PERDA concerning APBD is a Commission or a Special Committee, not *Banggar*.

The task of the Commission to discuss the draft PERDA concerning APBD attached inherently with the task of discussing the draft PERDA non-APBD as referred to article 49 letter b the Government Decree No. 16 of 2010 which states the Commission to discuss the draft PERDA. It can be seen further that the Government Decree No. 16 of 2010 does not distinguish between the draft PERDA concerning APBD and non-APBD, where both draft discussed through talk in two levels (level I and level II). Talks on level I, the Commission or the Special Committee discusses the draft of APBD and the result is brought to the talks in the level II to become final material of enacting APBD.

¹See Article 100 paragraph (2) the Ministry of Internal Affairs Decree No. 59 of 2007.

²Article 409 (d) the Law No. 23 of 2014 repeal and stated not to apply Article 1 point 4, article 314 up to Article 412, article 418 to 421 the Law Act No.17, 2014. With those articles, the Law No. 17 of 2014 which was originally a source of decisive normative authority of DPRD, are now replaced by the Law No. 23 of 2014.

³Article 406 of the Law No. 23 of 2014 states all legislation governing DPRD in the provincial and city are stipulated still remains valid as long as it does not conflict with the provisions of, or not regulated specifically in this Law. The Government Decree No. 16 in 2010 still valid, but the enforceability of are selective.

⁴Jimly Asshiddiqie, *the Constitution and Constitutionalism Indonesia*, the Secretariat-General and Clerk of the Constitutional Court of Indonesia, Jakarta, 2005, p. 356.

⁵Article 85 paragraph (3) The Government Decree No. 16 in 2010.

The associated scope of the authority of DPRD in discussing the draft of PERDA APBD needs to be seen its substances such as an allocation budget (spending) according to organizational units, functions, programs, activities, and types of expenses. In connection with it, it is interesting to see the Decision of the Constitutional Court No. 35/PUU-XI/2013. The decision states that the phrase 'activities' and the type of expenses' in article 15 paragraph (5) of the Law No. 17 of 2003 is contrary to the constitution of the Republic of Indonesia in 1945 and therefore do not have the force of law. In this context, Zainal Arifin Mochtar states that the mention of article 15 (5) is House of Representative (DPR) including DPRD. The reason of it is article 20 (5) of the Law No. 17 of 2003 uses the same 'phrase' with article 15 (5). In other words, based on the Decision of the Constitutional Court, DPRD does not have also authority to discuss the budget until the activity and type of expenditure. Moreover, the Minister of the Internal Affairs has already issued a Letter Number 902/3224/SJ dated 24 June 2014 subject follow up post Decision of the Constitutional Court No. 35/PUU-XI/2013 with refer to the circular letter of the Minister of Cabinet Secretary Number: SE-8/Seskab/VI/2006 dated June 11, 2014 subject of discussion of APBD post the Decision of the Constitutional Court No. 35/PUU-XI/2013, which essentially states that the Decision of the Constitutional Court applies is valid to DPRD to draft APBD.

From the perspective of the researchers, it can be expressed that article 20 paragraph (5) as mentioned above is the legal basis of DPRD discussing the budget to the areas of activity and type of such expenditures is not yet terminated or be considered constitutionally by the Constitutional Court. Therefore, the article 'a quo' is considered to have legally binding. In addition, the presence of the Minister of Internal Affairs letter refers to the Decision of the Constitutional Court does not throw over the enforceability of article 20 paragraph (5).

Even if it is said that the Decision of the Constitutional Court applies to DPRD, the question is that does DPRD need to approve or reject the budget? This question is similar to be applied in DPR's level. For the researchers, the Decision of the Constitutional Court No. 35/PUU-XI/2013 is not correctly enforceability of article 20 paragraph (5) of the Law No. 17 of 2003. Thus, it is legally, DPRD has authority to discuss the draft of PERDA on APBD. The scope of the discussion impresses that DPRD has entered the territory of the fiscal planning into the domain of the local government. Such impressions as stated above are true if the discussion of the draft of PERDA on APBD posites DPRD as a planner of the budget.

The scope of the authority of DPRD to discuss the draft of PERDA on APBD based on article 20 (5) the Law No. 17 of 2015 until the level type of expenditure, if linked with the Law No. 23 of 2014 jo. The Government Decree No. 58 in 2005 jo. the Ministry of Internal Affairs No. 13 of 2006 as amended several times, the last with the Government Decree No. 21 in 2011 do not synchronize. The reason of it is the last regulation as mentioned limits the scope discussion only to the level of activity, do not include this type of expenses. In this case, the referred regulation on this discussion is the Law No. 23 of 2014 as a guideline of the draft of APBD constitutively, the Law No. 17 of 2003 should be ruled out. It is in line with the mandate of Article 408 of the Law No. 23 of 2014 which states that 'at the time of the Law comes into force, all laws pertaining to the local government is declared valid as long as it has not been reimbursed and is not contrary to the provisions of this Law'.

4. Conclusion

Based on this study (research) carried out, it can be concluded that the budget function of DPRD essentially is to conduct financial supervisor for the sake of budget planning. This essential purpose places the budget discussion activities of DPRD to embody the use of financial supervision function to ensure: (1) the draft of KUA, PPAS, and RKPD; (2) the draft of PERDA on APBD and KUA, PPAS, and RKPD with some limitation, as followings: (a) income, expenses, and expenditure policies; (b) priority program and budgetary plafond program and activities of each program; and (c) budget allocation for program and activities.

The discussion of the draft of PERDA on APBD technically is done by Commission to reach all activities and types of expenses. The scope of the discussion is not only potentially creating budgetary transaction practice, but also exceeds the limits as specified in the Law No. 23 of 2014 and its implemented regulation in casu the Government Decree No. 58 of 2005 jo the Ministry of Internal Affairs Decree No. 59 of 2007.

Referring to the conclusion, the recommendation of this research is : (1) to adjust the article of the Law No. 17 of 2003 and the Law No. 23 of 2014 related to the limited scope of discussion of the draft of PERDA on APBD; and (2) to revise the Government Decree No. 16 of 2010. The Decree asserts Banggar's position as a tool of DPRD technically to discuss the draft of PERDA on APBD to be a guideline of DPRD revising its Code of Conduct.

References

Asshiddiqie, Jimly, *the Constitution and Constitutionalism of Indonesia*, the Secretariat-General and Clerk of the Constitutional Court of Indonesia, Jakarta, 2005.
-----, *Subject of Laws in Indonesia*, the Secretariat-General and Clerk of the Constitutional Court of

- Indonesia, Jakarta, 2006, .
- Manan, Bagir, *Welcome of the Autonomous Region*, the Centre of Legal Studies FH-UII, Yogyakarta, 2001.
- , *Theory and Political Constitution*, the Directorate General of Higher Education Department of National Education, Jakarta, 2001.
- Ridwan HR, *Administrative Law*, RajaGrafindoPersada, Jakarta, 2006.
- The Decision of the Constitutional Court No. 35/PUU-XII/2013.
- The Law No. 17, 2003 Concerning State Finance.
- The Law No. 25, 2004 Concerning National Development Planning System.
- The Law No. 32, 2004 Concerning Local Governance.
- The Law No. 33, 2004 Concerning Financial Balance between the Government and the Local Government.
- The Law No. 17, 2014 Concerning People's Consultative Assembly, the House of Representative, the Local Representative Council, and the Local House of Representative.
- The Government Decree No. 16, 2010 Concerning Guideline of Making Rules of the Local House of Representative (the Code of Conduct of the Local House of Representative).