

INSTITUTIONAL DESIGN OF THE REGIONAL HOUSE OF REPRESENTATIVES (DPRD): LEGAL POLITICAL STUDY ON INDONESIA'S LAW NUMBER 23 OF 2014 CONCERNING REGIONAL GOVERNMENT

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Abstract

By the promulgation of Law Number 23 of 2014 concerning Regional Government, there has been a shift in the institutional design of the Regional House of Representatives (DPRD in Bahasa Indonesia), especially in the aspects of the legislative function and its authority. There is an affirmation of the understanding of the DPRD as an element of regional government administration. In this context, the House of Representatives (DPR in Bahasa Indonesia) and the President deliberately combine the two types of power functions, the legislative and the executive, into one institution called the DPRD in the local government system in Indonesia. Shifting of institutional design above indicates that Regional Government Law is principally no longer categorizes the DPRD as a legislative agency but instead as an executive institution playing a role in supervising the

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implementation of Regional Government. Based on this Regulation, the theoretical interpretation of DPRD's existence is interpreted as an executive institution running the legislative function.

Keywords: *Regional Government, Regional House of Representatives, Institutional Design, Indonesia.*

Abstrak

Dengan diundangkannya Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah, terjadi pergeseran desain kelembagaan Dewan Perwakilan Rakyat Daerah, terutama dalam aspek fungsi legislasi dan kewenangannya, dan adanya penegasan pengertian DPRD sebagai unsur penyelenggara pemerintahan daerah. Pada konteks ini, DPR dan Presiden secara sengaja memadukan dua tipe fungsi kekuasaan, yakni legislatif dan eksekutif, ke dalam satu organ yang dinamakan DPRD dalam sistem pemerintahan daerah di Indonesia. Pergeseran desain kelembagaan di atas menandakan Undang-Undang Pemerintahan Daerah secara prinsipal tidak lagi mengkategorikan DPRD sebagai lembaga legislatif, melainkan lembaga eksekutif yang berperan dalam pengawasan penyelenggaraan pemerintahan daerah. Berdasarkan Undang-Undang ini, pemaknaan teoritik eksistensi kelembagaan DPRD dimaknai sebagai lembaga eksekutif yang menjalankan fungsi legislatif.

Kata kunci: Pemerintahan Daerah, DPRD, Desain Kelembagaan, Indonesia.

INTRODUCTION

The Regional House of Representative¹ is institutionally regulated in Article 18 paragraph (3) of The 1945 Constitution of The State of The Republic of Indonesia², which determined; “The provincial, regency, and municipal governments shall have their respective The Regional House of Representatives, the members of which shall be elected through general elections.” In terms of constitutional practices, despite having legitimacy through elections as a manifestation of popular sovereignty, the position of the DPRD is not like the House of Representatives³ of the Republic of Indonesia as a legislative agency formed based on the 1945 Constitution.

The latest regulation regarding the DPRD is determined in Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government.⁴ It should be known, this regulation revokes all provisions regarding DPRD (Province and Regency/Municipal) that exist in Law Number 17 of 2014 concerning People’s Consultative Assembly (MPR), House of Representatives (DPR), Regional Representative Board (DPD), and Regional House of Representatives (DPRD), and states that it does not apply anymore. Thus, all provisions regarding DPRD will refer to Law no. 23/2014. In Chapter VII concerning Regional Government Administrators, Article 57 states that the Government Administrators of Province and Regency/Municipal consist of the head of regional government and DPRD assisted by the

¹ Hereinafter referred to as DPRD. The use of the DPRD terminology in this article refers to both DPRD of Province and Regency/Municipal, which is based on the provisions in Regulations Number 23 of 2014 concerning Regional Government, as amended several times, most recently by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government have *mutatis mutandis* authority.

² From now on, referred to as the 1945 Constitution

³ Hereinafter abbreviated as DPR

⁴ It is hereinafter abbreviated as Law no. 23/2014, except when giving affirmation of meaning.

Apparatus of Regional government. Likewise, Article 95 paragraph (1) states that the Provincial DPRD is a representative institution of the province's people, which is located as an element of the implementation of the provincial government.

The regulation regarding the definition of DPRD above is consistently followed by the implementing regulations from Law no. 23/2014, including Government Regulation Number 18 of 2016 concerning Apparatus of Regional Government, and Government Regulation Number 18 of 2017 concerning Financial and Administrative Rights of Leaders and Members of DPRD, which defines the DPRD as Regional House of Representatives which serves as an element of the regional government administration. Thus, it can be said that the position of DPRD is a joint partner with the Head of Regional Government having equal status.⁵ However, in Article 96, paragraph (1) of Law no. 23/2014, it is emphasized that the DPRD has the functions of establishing provincial regulations, budgets, and supervision. In fact, in a unitary state, there is only one legislative agency, namely the DPR, as the sole legislative agency.⁶

When examined, the legislators of Law no. 23/2014 deliberately merge the two functions of power, the legislative and the executive, into one institution called the DPRD. The phrase 'representative institutions' is clearly a category of functions of legislative power. In contrast, the phrase 'element of government administrator' is clearly a category of functions of executive power, referring to the classical constitutional theory of *Trias Politica* of Montesquieu. The merging of the two functions of power above indicates that Law no. 23/2014 principally no longer categorizes DPRD as a legislative agency but rather an executive

⁵ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi* (Jakarta: Sinar Grafika, 2010), 254.

⁶ Sunanda Haizel Fitri "Kedudukan Dewan Perwakilan Rakyat Daerah (DPRD) dalam Penyelenggaraan Pemerintahan Daerah Berdasarkan Undang-Undang Nomor 23 Tahun 2014" *Jurnal Online Mahasiswa Fakultas Hukum* 2, no. 1 (Februari 2015): 2.

institution playing a role in supervising the implementation of the regional government.

In the era of Indonesia's New Order, the position of the DPRD was as one element of the regional or executive government, as regulated in Article 11 of Regulations Number 5 of 1974 concerning the Principles of Regional Government. DPRD is positioned as a partner of the Head of the Regional Government in the formulation and implementation of regional policies, rather than checking and balancing executive power. In such a position, the DPRD does not reflect as a representation of the people in their area at all. Therefore, in Article 14 of Regulations Number 22 of 1999 concerning the Regional Government, the position of DPRD is returned to its original function, namely as a legislative agency. Along with this new function, the DPRD is given the right to question the accountability of the head of regional government, which is not stated in Regulations Number 5 of 1974. Furthermore, Regulations Number 32 of 2004 concerning the Regional Government⁷ returns the DPRD as part of the regional administration. Nowadays, by the formation of Law no. 23/2014, it is determined that the DPRD holds the position as an “element of regional government administrators.”

Then, it raises the debate on the issue of the position and authority of the DPRD, which reaches the fundamental question, does DPRD firmly hold the position as a legislative institution as it is known in the concept of *Trias Politica* (Separation of Power) or does it hold the position as an element of regional government (executive)? The debate about the position of the DPRD arose when the concept of putting the DPRD as a legislative agency in Regulations Number 22 of 1999 was amended to the DPRD as an element of regional government used in Law no. 32/2004, and it reaffirms its position by using Law no. 23/2014. Based on the identification of the background described above, it was formulated several focuses on the study to be described in this paper, including a. the theoretical construction of the institutional

⁷ Hereinafter abbreviated as Law No. 32/2004.

existence of the Regional House of Representatives; and b. The legal reason of the legislators places the Regional House of Representatives as an element of regional government administration in Law no. 23/2014 concerning the Regional Government.

The type of research used is normative juridical research. The researcher tries to examine and analyze the application of rules or norms in positive law.⁸ The approach used in this study is the statute approach and the conceptual approach. The legislative approach is carried out by examining and examining the regulations related to the theme of the research, while the conceptual approach is used because it uses an approach that seeks to offer new conceptions associated with the institutional design of the Regional House of Representatives.

Regional House of Representatives in State Constitutional System of The Republic of Indonesia

The Republic of Indonesia, as a country adopting and recognizing the essence of democracy as an embodiment of the concept of popular sovereignty, has regulated the existence of representative institutions such as MPR, DPR, DPD, and DPRD. Regarding this representative institution, it can be seen in the 1945 Constitution before the amendment that put the highest sovereignty in the hands of the people. However, in the 1945 Constitution before the amendment, it was not regulated regarding the regional representative institutions despite acknowledging the existence of the provincial government as a delegation of authority from the central government.

The existence of regional representative institutions before the amendment of the 1945 Constitution can be seen in the regulations of regional government that had been applied in Indonesia, even though the 1945 Constitution did not regulate the existence of regional representative institutions. The regulations of regional government that have been used in Indonesia clearly state that to realize democracy in the region and the implementation of an excellent regional government,

⁸ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006), 295.

it must have a regional representative institution so that there is no centralization of power in one institution. In addition, it can also be seen that the regional representative institutions later changed their name to the DPRD, which is not only holding the position as a regional legislative agency but also has a regulatory function that is realized in the formation of regional and other regulations aimed at regulating and managing their institution.

After the amendment, the 1945 Constitution contains a specific chapter on the regional government in which is chapter VI (Regional Government) has three articles. Those are Article 18, Article 18A, and Article 18B. These three articles result from the second amendment of the 1945 Constitution, which was ratified in 2000. These three Articles serve as a constitutional-juridical basis for legislation of regional government and regional legislative institutions. Throughout the history of Indonesian state administration, as explained earlier, the matter of regional representative institutions, often called DPRD, is one of the aspects regulated in the legislation regulating regional government. Meanwhile, a series of legislation that specifically regulates the matter of DPRD has also been generated throughout the history of the Indonesian state administration.

When compared, in the era of Indonesia's New Order, which applied the principle of regional centralization, the position of DPRD was positioned as one of the elements of regional or executive government, as regulated in Article 11 of Regulations Number 5 of 1974 concerning the Principles of Regional Government. In this context, DPRD is positioned as a partner of the Head of the Regional Government in the formulation and implementation of policies in the regions, rather than checking and balancing the executive power. In such a position, DPRD does not reflect as the representation of the people in their area. Therefore, in Article 14 of Regulations Number 22 of 1999 concerning the Regional Government, the position of DPRD is returned to its original function, namely as a legislative agency. Along with this new function, the DPRD is given the right to question the

accountability of the head of regional government, which is not stated in Regulations Number 5 of 1974. Furthermore, Law no. 32/2004, which was later replaced by Law no. 23/2014, returned the DPRD positions as part of regional government administration elements.

Positions, Functions, Duties, And Authorities of Regional House of Representatives

The position of DPRD as a regional representative institution is clearly regulated in Article 18 paragraph (3) of the 1945 Constitution of which states that the provincial, regency and municipal governments shall have their respective The Regional House of Representatives, the members of which shall be elected through general elections. This provision becomes a legal basis for the existence of DPRD in the constitutional system of Indonesia. The 1945 Constitution in Article 18 paragraph (3) does not explain the position, function and duties, and authority of the DPRD. Still, Article 18 paragraph (7) states that specific Regulations regulate the composition and procedures of regional government administration.

Law no. 32/2004, subsequently replaced by Law no. 23/2014, was the first regulation established to regulate regional government after the amendment of the 1945 Constitution. In these Regulations, the position and the function, as well as the duties and the authority of the DPRD, are regulated. Based on Law no. 23/2014, provincial, regency, and municipal DPRD consist of members of political parties participating in general elections who are elected through general elections. The Provincial DPRD is a representative institution of the people of the provincial area, which holds the position as an organizer of the provincial, regional government, as well as has the status of the regional government official.⁹ While the DPRD of regency/municipal is a representative institution of the people of the regency/ municipal that hold the position as an element of organizing the regional

⁹ Article 94 and 95 of Law no. 23 of 2014 concerning Regional Government.

government of regency/municipal, as well as has the status as the regional government official.¹⁰

Furthermore, based on Article 96 paragraph (1) of Law no. 23/2014, the provincial DPRD has the function: a. the formation of provincial regulations; b. Budget; and c. Supervision. The three intended functions are carried out within the framework of people's representation in the province. The same function is inherently *mutatis-mutandis* in the DPRD of regency/municipal. Based on Article 101 and Article 154 of Law no. 23/2014 as amended by Law Number 9 of 2015 concerning the Second Amendment of Law Number 23 of 2014 concerning Regional Government, Provincial DPRD, applying *mutatis-mutandis* to DPRD of regency/municipal, has the following duties and authorities:

1. forming a provincial regulation with the governor;
2. discussing and approving the draft of Provincial Regulation concerning Provincial APBD (Regional Government Budget) submitted by the governor;
3. carrying out supervision of the implementation of Provincial Regulations and Provincial APBD;
4. electing the governor and deputy governor in the event of a vacant position to continue the remaining term of office;
5. proposing the appointment and dismissal of the governor to the President through the minister to get the ratification of the appointment or dismissal;
6. providing opinions and considerations to Provincial Governments regarding planned international agreements in provincial areas;
7. approving plans for international cooperation carried out by the Provincial Government;
8. requesting a report on the accountability of the governor in the administration of the Provincial Region;

¹⁰ Articles 147 and 148 of Law no. 23/2014.

9. approving cooperation plans with other regions or with third parties that burden the community and provincial areas; and
10. carrying out other duties and authorities regulated in the provisions of the legislation.

Rights and obligations above indicate that the DPRD is a regional representative institution and at the same time is domiciled as an element of regional government organizers which has the main task of implementing supervision, namely carrying out supervision over the implementation of regional regulations and other legislation, regulations of the regional head, regional revenue and expenditure budget (APBD), local government policies in implementing regional development programs, and international cooperation in the regions, in the context of implementing checks and balances between the Regional Government and the DPRD.¹¹

The Shifting of Legislation Function of Regional House of Representatives

When compared to its function, there is a shift in the function of DPRD in Law no. 32/2004 with Law no. 23/2014. It can be seen in Article 41 of Law no. 32/2004 determining DPRD has functioned as legislative, budgetary, and supervisory. Compared to the provisions in Article 96 paragraph (1) of Law no. 23/2014, determining the Provincial DPRD has the function: a. the formation of provincial regulations; b. Budget; and c. Supervision. The shifting of function from the previous "legislative function" to "the function of regional regulation formation" has the consequence that the DPRD no longer has a legislative function. Still, it is limited to the function of regional regulation formation only. At the level of regional government practices, the shifting may not be essential and has no implication because before it is changed into the function of forming regional regulations, the function of the DPRD is truly to form a regional regulation together with the head of regional

¹¹ Ina Sopia Kirihio, "Peranan Dewan Perwakilan Rakyat Daerah (DPRD) dalam Melaksanakan Fungsi Pengawasan terhadap Anggaran Pendapatan dan Belanja Daerah," *Lex Administratum* volume VII Nomor 1 (Januari 2019): 19.

government. However, it will be different if this is seen from a theoretical point of view. The shifting in the function of DPRD from the legislation function to the function of establishing a regional regulation has the consequence that DPRD no longer carries out the legislative function, as attached to the representative institutions of the people in general.

The definition and meaning of the word “legislation” itself, according to the Indonesian Law Dictionary, is “The process of regulations making in Indonesia consists of planning, proposing a bill to the DPR, deliberations in the DPR, an agreement between the DPR and the President, ratification by the DPR, and promulgations and announcements by the Government.”¹² The legislative agency itself is a legislative agency that makes the regulations, which in the context of the Indonesian constitution, based on the 1945 Constitution, the power to form regulations becomes the authority of the DPR.

Furthermore, when it is related to the concept of a unitary state, there is only one legislative agency in Indonesia's context is the People's House of Representatives (DPR). DPRD is not a legislative agency, so it cannot be given a legislative function. Therefore, it is appropriate if Law no. 23/2014 mentions the function of DPRD as the function of the formation of regional regulations. In such an interpretation, the DPRD is not the actual legislative agency but rather an element of regional administration and the head of regional government.

The Theoretical Construction of Regional House of Representatives

Efforts to impose restrictions on power are carried out by patterns of restrictions in the internal management of state power itself, namely by making distinctions and separation of state power into different functions. Aristotle has put forward the rationale of the doctrine of Trias Politica, and later it was also developed by John

¹² Kamushukum.web.id “Legislasi,” <https://kamushukum.web.id/arti-kata/legislasi/> (accessed 1 December 2019).

Locke.¹³ However, what can be considered the most influential in his idea of distinguishing the functions of power is Montesquieu with his Trias Politica theory.¹⁴ namely, branches of legislative power, branches of the executive or administrative power, and branches of judicial power¹⁵.

According to Montesquieu, in his book entitled *L'Esprit des Lois* (1784), power in the state is divided into three functions, namely: 1). Legislative power as a legislator; 2). Executive power to implement; and 3). Judicial or judicial power. From the Montesquieu classification, it is known as the division of modern state power in three functions (separationism three rationales), namely the legislative function, the executive or administrative function, and the judicial function.

In simpler language, Miriam Budiardjo defines the legislative as the power to form laws, the executive as the power to organize the law, and the judiciary as the power to adjudicate the violations of the law. Furthermore, both regarding the tasks (functions) and the equipment (institutions) that carry them out, the three must be separated from each other.¹⁶

When examined, the legislators of Law no. 23/2014 deliberately merged the two functions of power, namely the legislative and the executive into one institution called DPRD. The phrase “representative institutions” is clearly a category of functions of legislative power, while the phrase “element of regional government administrators” is clearly a

¹³ Abdul Ghoffar, *Perbandingan Kekuasaan Presiden Indonesia setelah Perubahan UUD 1945 dengan Delapan Negara Maju* (Jakarta: Kencana, 2009), 11.

¹⁴ The full name of Montesquieu is actually Charles de Secondat Baron de Labriede et de Montesquieu. The term *Trias Politica* actually is not promoted by Montesquieu himself. The word *Trias Politica* used to identify the separation of powers in the three axes/branches was raised by Immanuel Kant. SF. Marbun dan Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara* (Yogyakarta: Liberty, 2000), 43.

¹⁵ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Rajawali Pers, 2009), 282.

¹⁶ Miriam Budirdjo, *Dasar-Dasar Ilmu Politik* (Jakarta: PT. Gramedia Pustaka Utama, 2008), 283.

category of executive power functions, referring to the classic constitutional theory of Trias Politica of Montesquieu. The merging of the two functions of power above indicates that Law no. 23/2014 principally no longer categorizes DPRD as a legislative institution, but rather an executive institution playing a role in supervising the implementation of the regional government.

It is confirmed by the legislators' action reducing the position of DPRD in which it is not only limited to the use of nomenclature but also limited to aspects of its functions and authorities. As described previously, in Article 41 of Law no. 32/2004 determining DPRD has legislative, budgetary and supervisory functions. Compare with the provisions in Article 96 paragraph (1) of Law no. 23/2014 determining Provincial DPRD has the function: a. the formation of provincial regulations; b. Budget; and c. Supervision.

Such a consequence is that DPRD no longer has a legislative function, but is limited to the function of establishing regional regulations only so that DPRD normatively cannot be categorized in the legislative power branch in the perspective of Montesquieu's Trias Politics theory. However, when reviewed in a limited manner, in the context of regional administration, DPRD with its functions, duties and authorities as explained earlier, *de facto* performs legislative functions (formation of regulations, supervision, and budgets) of regional governments (governors, regents, mayors) in the frame of partnership of regional government consisting of DPRD and regional government.

DPRD is a regional representative institution that holds the position as an element of regional government administrators. The interpretation is expressly determined in Article 95 paragraph (1) of Law no. 23/2014 which states that; The Provincial DPRD is a representative institution of the provincial area that holds position as an element of the implementation of the Provincial Regional Government, as well as Article 148 paragraph (1) which states that; DPRD of Regency/municipal is a representative institution of the regency/municipal that hold position as an organizer of regional

government of regency/city, so blurring the boundaries between DPRD as a legislative agency/representative institution and the DPRD as an executive institution/element of regional government administration according to the provisions of Law no. 23/2014.

In fact, when examined in the concept of trias politica, DPRD in carrying out its functions, duties, and authorities is as a legislative agency. It was said the legislative agency because DPRD was given the authority to make regional legal products in the form of regional regulations, and also the mechanism for filling out their positions through direct elections by the people in the regions. The role of DPRD in the constitutional system in Indonesia is to supervise the executive, make a regional legal product in the form of a regional regulation together with the regional government, and carry out the regional budget function.

Based on the descriptions in this sub-chapter, it can be concluded that the theoretical construction of the institutional existence of DPRD according to Law no. 23/2014 is as an executive institution (an element of regional government administrators) that carries out legislative functions (representative institutions in the regions). In other words, the DPRD is as a legislative agency in de facto, but, in de jure, it is as an executive agency.

Legal Rationale for The Establishment of the Regional House of Representatives as an Organizing Element for Regional Government

The effort of legislators (the House of Representatives and the President of the Republic of Indonesia, the co-legislator) to reduce the position of DPRD is not only limited to the use of nomenclature, but also on aspects of its function and authority. This can be observed, as described previously, in Article 41 of Law no. 32/2004 determining DPRD has legislative, budgetary, and supervisory functions. Compare with the provisions in Article 96 paragraph (1) of Law no. 23/2014 determining Provincial DPRD has the function: a. the formation of provincial regulations; b. Budget; and c. Supervision. Commonly,

understood in the context of legislation theory, the function of the formation of regional regulations is one small part of the wider scope of the legislative function. This is a consequence that DPRD no longer has a legislative function, but is limited to the function of forming regional regulations only.

When explored further, the legal reasons used by the House of Representatives and the President of the Republic of Indonesia in an authentic way to emphasize the position of DPRD as an element of regional government administrations through the formation of Law no. 23/2014, reflected in the Explanation of Law no. 23/2014, and Official Minutes DPR RI of first Plenary of 2014-2015, which is on Thursday, September 25, to Friday, September 26, 2014.

First, based on an official/authentic interpretation of the Legislator, in General Explanation number 2 of Law no. 23/2014, it states that:

"In contrast to the central government administration consisting of executive, legislative and judicial agencies, the regional government administration is carried out by DPRD and head of regional government. DPRD and head of regional government hold the position as elements of regional government administrators who are given the people's mandate to implement Government Affairs which are left to the Regions. Thus, DPRD and head of the regional government are equal partners who have different functions. DPRD has the functions of establishing regional regulations, budgets, and supervision, while the head of regional government carries out the implementation function of the regional regulations and regional policies [...]"

When examined, the legal reason for the affirmation of DPRD as an element of regional government administration lies in the interpretation of the Legislators of the Regulation interpreting that the regional government administration is not similar to or different from the central government administration which implements the concept

of *trias politica* (consisting of executive, legislative, and judicial institutions). The consequence that the legal politics of regional government administration is part of the executive function of the Central Government (President) as the highest holder of government power which is carried out based on the principle of a unitary state.

Therefore, no matter how much autonomy is given to the Region, the final responsibility for the regional government administrations will remain in the hands of the central government. For this reason, the regional government in a unitary state is a unity with the national government. The position of DPRD within the framework of the Unitary State of the Republic of Indonesia does not stand alone as a legislative body like the central legislative body. In this case, placing the DPRD as part of the regional government or as an element of regional government administration is a consequence of the form of a unitary state.¹⁷ Based on this reasoning, the placement or affirmation of the position of DPRD as an element of regional government administration through the formation of Law no. 23/2014 by the Legislator has juridical legitimacy.

Second, based on the original intent from the Legislator, through the Official Minutes of DPR RI, as mentioned above, it states that:

Philosophically, the amendment of Regulations Number 32 Year 2004 is based on the understanding of the constitution that [...]. In addition, through wider autonomy in the strategic environment of regional globalization, it is expected to be able to increase competitiveness by paying attention to the principles of democracy, equity, justice, privileges, and the specificity and potential and diversity of regions in the system of the Unitary State of the Republic of Indonesia. The granting of the widest

¹⁷ Jorawati Simarmata, "Menafsirkan Hak Imunitas Anggota Dewan Perwakilan Rakyat Daerah (Analisis Surat Kemendagri Nomor 331/9914/OTDA tertanggal 14 Desember 2016)", *Jurnal Legislasi Indonesia*, volume 15 nomor 1 (Maret 2018): 2.

possible autonomy to the regions is carried out while upholding the principles of the Unitary Republic of Indonesia.¹⁸

Through this Bill, the principles of regional autonomy are put in place in the system of presidential governance of the unitary state of the Republic of Indonesia which confirms that the real power of government is in the hands of the President, which is described in various government affairs [...].¹⁹

Another important thing in this Bill is that Regulations Number 17 of 2014 concerning MPR, DPR, DPD and Special Committee of DPRD have also agreed to take over all material about DPRD from Regulations Number 17 of 2014. The policy was referring to the mandate of Article 18 of the 1945 Constitution, which places the head of regional government and DPRD as part of the regional government. This law stipulates the status of the DPRD as a regional official, with the status it holds is expected to further strengthen its pride as well as its responsibilities in the context of exercising of its rights and obligations as a Member of DPRD in determining the APBD, the formation of a Regional Regulation, and Supervision of the Regional Regulation [...].²⁰

Based on the descriptions above, it appears that the original intent of the legislators in the laying down or affirmation of DPRD as an element of the regional government administration is included on three main points, as follows.

First, the granting of the widest possible autonomy to the regions is carried out while upholding the principles of the Unitary State of the Republic of Indonesia. It means that the implementation of the principle of the unitary state in the theory and practice of the constitution of the Republic of Indonesia must be carried out in

¹⁸ DPR RI, *Risalah Resmi Rapat Paripurna DPR RI pada Masa Persidangan I Tahun Sidang 2014–2015*, (Jakarta: Sekjen DPR RI, 2014), 122.

¹⁹ Ibid, 124.

²⁰ Ibid, 126-127.

harmony, including in terms of lowering the position of the DPRD which is not only limited to the use of nomenclature, but also on aspects of its function and authority. Therefore, in essence, the position of the DPRD must be understood in the context of a unitary state.

Second, the real power of government is in the hands of the President. This means that the Regional Government in the unitary state is one unit with the National Government so that the laying out or the interpretation of DPRD as a regional legislative institution creates conceptual confusion. In this context, the DPRD has a strategic function in assisting the President to carry out supervision of the regional government administration. This strategic function is actually needed in the context of implementing checks and balances between the Regional Government and the DPRD.

Third, the mandate of Article 18 of the 1945 Constitution which places the head of regional government and DPRD as part of the regional government. According to the interpretation of the Legislators. Although it is not explicitly regulated in the 1945 Constitution, DPRD is an integral or inseparable part in the administration of regional government. Specifically, the DPRD is institutionally stipulated in the 1945 Constitution in Chapter VI about Regional Government, Article 18 paragraph (3); Provincial, Regency, and city governments have DPRD whose members are elected through general elections. Based on the provisions in Article 18 referred to, the Regional Government consists of the Regional Government and DPRD. Thus, the DPRD is constitutionally as an element of regional government administration.

CONCLUSION

The institutional design of DPRD according to Law no. 23/2014 is regulated as an executive institution (the administration element) that carries out legislative functions (the formation of regional regulations, budgets, and supervision) in the regions. In other words, based on the Trias Politica theory, DPRD is a legislative institution (de facto), but it is an executive institution (de jure). Such an arrangement has an impact on lowering the authority of the legislative function of DPRD to the

extent of establishing regional regulations only. Conceptually, this potentially weakens the position of DPRD in carrying out its duties and functions, especially, in the context of the implementation of checks and balances in the administration of regional government.

Whereas, the legal reason of the legislators (the House of Representatives and the President of the Republic of Indonesia) places the regional house of representatives as an element of regional administration in Law no. 23/2014, namely; a). Legislators interpret the regional government administration as not being similar to or different from the central government administration, which applies the Trias Politica Montesquieu concept (executive, legislative, and judicative institutions); and b). The original intent of the legislators in affirming DPRD as an element of regional government administration lies in the interpretation of Article 18 of the 1945 Constitution of which places the head of regional government and the DPRD as part of the regional government. According to the interpretation of the Legislators, although it is not explicitly regulated in the 1945 Constitution, the DPRD is an inseparable part in the regional government administration; thus the DPRD is constitutionally as an element of the regional administration.

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