
The position of the DPRD as an equal partner to the Regional Head according to Law no. 23 of 2014

Mochammad Rayhan Widiyasmoro¹, Labib Mutaqqin²¹ Muhammadiyah University of Surakarta (C100190240@student.ums.ac.id)² Muhammadiyah University of Surakarta (lm812@ums.ac.id)

ABSTRACT

Indonesia in running its government uses a decentralized or centralized system. The main objective is for each region to have the ability to control and utilize regional autonomy as much as possible and not be disturbed by outside interests. In the process, the principle of decentralization undergoes changes above its laws, both to its object and subject. Contained in Law Number 23 of 2014 which is an amendment of Law Number 32 of 2004 which puts the DPRD as a partner for regional heads which was originally a legislative institution for regional government. And finally, the duties and authorities of a member of the DPRD also underwent changes that were not too significant. This research will focus on Law Number 23 of 2014 both historically and sociologically regarding the changes in it. This research uses juridical-normative research methods by focusing on laws, doctrines, and jurisprudence.

Keywords: DPRD, Regional Head, Law Number 32 of 2004

INTRODUCTION

Indonesia is a unitary country with a republic system. This is in accordance with the 1945 Constitution Article 1 paragraph (1) which reads "Indonesia is a Unitary State in the form of a Republic." A unitary state is a state system which is centered on one particular point and becomes the regulator of the regions that are under it structurally. Usually in a unitary state system, there are two types of systems used, namely a centralized system and a decentralized system. (Chazawi, 2022)

A unitary state is a country that is governed by a unitary system. Power in political matters can indeed be distributed to organs below it and can be elected by the people, but can be dismissed by central officials.

The centralization system in a unitary state is the ability of the central government to centralize all state activities within the central rules and domain. Meanwhile, the decentralization system in a unitary state is the handover of affairs from the central level to the branch (regional) level. (Simanjuntak, 2015) And in Indonesia it is very suitable to use a regional decentralized system.

In accordance with the mandate of the 1945 Constitution in Article 18, it is explained that each region has its own autonomy and is given the opportunity to utilize what is available in its respective region in order to achieve mutual prosperity and create healthy competition and through the principles of democracy, equality, prosperity and potential. diversity in Indonesia. (Azhari, 2019)

In implementing regional decentralization, the government provides the broadest possible autonomy to regions to regulate their regions, as long as it does not violate the applicable constitution. This is also explained in Law no. 23 of 2014 concerning Regional Government Article 1 Paragraph (6) which reads "Regional Autonomy is the right, authority and obligation of autonomous regions to regulate and manage their own Government Affairs and the interests of local communities in the system of the Unitary State of the Republic of Indonesia" (Haris, 2005).

In the regional government system, the regional head is the state official who is most responsible for carrying out regional autonomy, so the welfare and prosperity of the citizens of a region depends on the regional head. Regional heads are elected directly by the people, especially regents and mayors, in making decisions they create great confidence in the regional head. Regional heads also have better legitimacy

when elected directly by the people than when elected by the DPRD (Mambu, 2012).

The Regional People's Representative Council, hereinafter abbreviated as DPRD, is a regional representative body elected by the people through direct elections as part of the regional government and at the same time becomes part of the regional government. The DPRD also determines the form and results of regional government administration, whether the government is democratic or not, and whether the government is successful or not. So it has an impact on the implementation of the DPRD. The DPRD's role in helping shape the form and results of government also depends greatly on the DPRD's relationship with regional officials. (Somad, 2011)

In Indonesia, there are 3 institutions that regulate the running of government in Indonesia, namely the Legislative, Executive and Judicial institutions. In Law no. 23 of 2014 concerning Regional Government, the position of the DPRD is an institution that is given a mandate by the government to carry out the government system as given and mandated by the people by becoming a collaborative partner with regional heads. The DPRD itself has governmental functions in the form of a legislative function regarding regional regulations, a supervisory function, and a budget function, while the regional head carries out and controls regional regulations over the implementation function. In this case, the DPRD is also assisted by regional officials in supervising regional heads. Meanwhile, regarding the Composition, Status, Roles, Rights, Duties, Obligations, Powers and Obligations of the DPRD, it is regulated in Law no. 23 of 2014 concerning Government Administrators. (Rachmaddiansyah, 2018)

What has attracted attention is the changes that have occurred in the position of the DPRD and Regional Heads in legislation. In Law 32 of 2004 it is stated that the DPRD and Regional Heads have the position of regional legislature and carry out legislative functions at the regional level. But then it changed when Law no. 23 of 2014 concerning Government Administrators which positions the DPRD and Regional Heads as equal partners. Article 57 states that government administration at the district/city or provincial level is carried out by the Regional Head and DPRD assisted by Regional Apparatus. Then in article 96 paragraph (1) the function of the DPRD is the formation of provincial regulations, budgets and supervision (Prayudi, 2023)

From this background, the researcher wants to provide an overview and explanation of the changes that occurred to the DPRD and Regional Heads between Law 32 of 2004 and Law no. 23 of 2014 concerning Government Administrators from a sociological-historical perspective using Juridical-Normative research methods.

RESEARCH METHODS

The method in this research uses normative legal research or doctrinal law with a historical and sociological approach as well as a conceptual approach. This type of research is descriptive research that uses and explains the phenomena that are currently occurring. This research uses secondary data originating from literature studies in the form of data originating from books, journals, literacy, and opinions of legal experts as well as several other sources that can support the success of this research. (Dimiyati, 2004).

RESULTS AND DISCUSSION

Background to Law no. 23 of 2014

UU no. 23 of 2014 is a law that regulates Regional Government. The Regional Government Law itself has been changed and refined several times since the reform. The first time it changed was in Law no. 22 of 1999 as a replacement for Law no. 5 of 1974, then underwent another change with the emergence of Law no. 32 of 2004 focuses on the regional head election system but does not change regional government management policies. Then the last thing is the presence of Law no. 23 of 2014 and changes were made to Perpu Number 2 of 2014 which only canceled 2 articles regarding regional head elections

by the DPRD. (Rustandi, 2017)

We often encounter the dynamics of changes that occur in the state system in Indonesia, both centralization and decentralization. But in the unitary state of Indonesia, the decentralized system is the right choice, assisted by deconcentration and medebewind patterns. The changes that occur in the central government system refer to the ultra vires doctrine (detailing government affairs given to the regions one by one) and residual power or open end arrangement (the concept of original power or residual power). The Ultra Vires Doctrine is felt to have a stronger centralization characteristic than residual power, in fact according to some experts, residual power is a system with the relationship between the central government and the regions which can also be applied in countries with a federation system. Meanwhile, in a unitary state, residual power is ideally in the hands of the center. (Namlis, 2018)

The pattern between the center and the regions has been regulated since 1974 with the issuance of Law no. 5 of 1974 until it reached Law no. 23 of 2014 as the latest regulation. UU no. 5 of 1974 can be called an Ultra Vires Doctrine pattern because the authority given to regions by the center can be detailed one by one. Meanwhile Law no. 22 of 1999, Law no. 32 of 2004, and Law no. 23 of 2014 can be said to use residual power or open end arrangements because each region is given complete and free authority except for matters that can only be handled by the center such as national monetary and fiscal matters, defense and security, foreign affairs, justice and religion. Apart from that, the decentralization system implemented in Indonesia also applies symmetric decentralization, namely the granting of special autonomy powers to certain regions such as Aeh, Jogja and Papua. This is stated in Law no. 22 of 1999. (Namlis, 2018)

Changes in a state system cannot possibly be separated from the context, format and political ideology of the ruler. When a new ruler appears, a rather open policy is developed, but if power is able to consolidate itself, the policy can be changed to closed, authoritarianism or even totalitarianism.

Stevan Walgrave argued that policy change becomes an agenda-setting problem, an important condition where policy change becomes a problem for the political agenda. It is impossible for legislative changes to be free from the political agenda of the spirit of reform after the New Order government. In order to meet the demands of the people and the conditions of each region, the government made very big changes regarding the governmental relationship between the central government and regional governments and Law no. 22 of 1999 and came into effect in 2001. This spirit of change emerged by giving the broadest possible autonomy to regions to regulate their regions as much as possible because the centralized system was considered to have failed in carrying out its duties and was felt to be causing "ripples" in the regions to break away from Indonesia. (UGM, 2010)

Geoffy Duedly and Jeremy Ricadson argue that there are four variables that influence policy change in a state, namely ideas, interests, institutions and individuals and these four variables are which became the basis and main reference for policy changes in various regions in Indonesia after the fall of the New Order regime which was felt to have failed in turning Indonesia into a more democratic country. This is proven by the existence of separatist movements such as Free Papua, the Free Aceh Movement, and the United Republic of Maluku, all of which emerged due to disappointment with policies from the center. The existence of variable interests is the basis that each region has its own desires and interests and is different from other regions, because if it is focused on the center there will almost be "lost control" which screams federalism. (Duedly, 2016)

Amendments to Law no. 23 of 2014

In Law no. 23 of 2014 still uses a residual power pattern, where the division of government affairs is divided into absolute government affairs, concurrent government affairs and general government affairs, this is in accordance with Article 9 of Law no. 23 of 2014. Absolute government affairs are matters that are the rights and obligations of the central government, namely foreign policy, defense, security, justice, monetary and fiscal, and religion. Concurrent government affairs are affairs that are shared between regional governments and the central government, and finally, general government affairs are affairs that fall under the authority of the president. In Law no. 23 of 2014 the position of the DPRD is still the same

as Law no. 32 of 2004 as part of regional government administration. (Kurniawan, 2016)

What is different again is the regional head election system. Articles relating to regional elections in Law no. 23 of 2014 was canceled by Perpu no. 1 of 2014 concerning Regional Head Elections. The separation of government laws and regional election laws aims to ensure that the two laws operate optimally according to the needs of each region. Apart from that, another function of this separation is to emphasize the differences in positions between the Governor and the Mayor/Regent.

In this case, the Governor is elected through a direct election mechanism, but unilaterally the Governor becomes the representative of the central government in the region. This results in the governor's authority being castrated because he has dual authority, namely as head of regional government and representative of the central government. However, it is different with the Regent/Mayor who is elected by the people but whose status is as an autonomous regional ruler so that he can prioritize the principle of decentralization, and this is where the urgency of separating the implementation of regional government elections and regional election elections into two different laws. (Pardede, 2018)

DPRD as Equal Partner to Regional Heads

In Article 207 of Law no. 23 of 2014 says that "*The working relationship between the DPRD and regional heads is based on an equal partnership*" The purpose of this relationship is to level the playing field between Regional Heads and DPRD. DPRD has an equal level in government to jointly enforce and strive to determine regional policies, which can accommodate and channel community aspirations for good policies (Supriarno, 2019)

The institutional repositioning between the DPRD and the Regional Head forms a parallel pattern which is implemented by paying attention to partnerships in which each other works together to form policies that are felt to provide prosperity and create development for local communities. (Sabarno, 2008) In policy formulation by the Regional Head, the DPRD should be involved in it and become a communication medium to ensure regional development is guaranteed as much as possible for the welfare of the community. What is more interesting is that implementing this will increase the sense of legal certainty for the community. (Rahardjo, 2009)

In fact, in Law no. 23 of 2014 DPRD is an institution that has an equal position to the Regional Head but has different roles and functions in carrying out the government system. The working partner relationship between the DPR and the Regional Head is not to supervise each other. The partnership relationship means carrying out their respective duties and functions for the Regional Head and DPRD to run the government system. Based on this, both parties, both the Regional Head and the DPRD, must maintain harmony and support each other, not as competitors. (Kaloh, 2007)

The relationship between DPRD and Regional Heads according to Law no. 23 of 2014 is in making Regional Regulations. These two institutions have the right to participate in making regional regulations according to Article 236 Paragraph (2), but in making Regional Regulations that have the same substance, the Regional Regulations originating from the Legislature must take precedence. The establishment of Legislative Regulations is not may depart from principles that are contrary to prevailing societal norms. The formation of Regional Regulations includes the stages of planning, drafting, discussing, determining and promulgating which are guided by the provisions of statutory regulations. The community is also asked to participate in the supervision process of the two working partners, namely the DPRD and Regional Heads. (Sugianto, 2017)

CONCLUSION

Indonesia has experienced changes related to its Government Regulations four times since the New Order until now. The most pronounced change was during the move from the new order marked by the Suharto regime. So, to meet the demands of the people, a new government regulation law was created with the introduction of Law Number 22 of 1999 which changed the centralized system which was felt to

have failed in realizing a country that was moving towards democracy. This law changed government arrangements towards a decentralized system, and subsequent changes did not undergo too big a change until Law no. 23 of 2014.

In Law no. 23 of 2014 concerning Regional Government positions the DPRD and Regional Heads as equal partners. Equal partners in this case means that the DPRD in running the government with the Regional Head does not supervise each other and must work together to maintain harmony for the implementation of regional government that is in accordance with community expectations and does not violate the philosophy of the law.

The change in the DPRD, which used to be a legislative institution and then moved to become a regional head's working partner, was caused by several factors which formed or influenced the formation of a regional government law

REFERENCES

1. Azhari, A. K., & Negoro, A. H. S. (2019). *Desentralisasi dan Otonomi Daerah di Negara Kesatuan Republik Indonesia*. Malang: Intrans Publishing, 2019.
2. Kurniawan, F. (2016). *Kedudukan Dan Tanggungjawab Kepala Daerah Istimewa Yogyakarta (Studi Perbandingan Menurut UU No. 22 Tahun 1999, UU No. 32 Tahun 2004 dan UU No. 13 Tahun 2012)* (Doctoral dissertation, Universitas Islam Indonesia).
3. Mambu, B. R. (2012). Hubungan Kewenangan antara DPRD dan Kepala Daerah dalam Sistem Pemerintahan Daerah. *Jurnal Hukum Unsrat*, 20(3), 92-103.
4. Namlis, A. (2018). Dinamika Implementasi Penyelenggaraan Pemerintahan Daerah. *Jurnal Kajian Pemerintah: Journal Of Government, Social And Politics*, 4(1), 40-47.
5. Pardede, M. (2018). Legitimasi Pemilihan Kepala/Wakil Kepala Daerah dalam Sistem Pemerintahan Otonomi Daerah. *Jurnal Penelitian Hukum p-ISSN*, 1410, 5632.
6. Prayudi, P. (2023). HUBUNGAN DPRD DAN KEPALA DAERAH: STUDI PENGGUNAAN MEKANISME KONSULTASI PEMBUATAN KEBIJAKAN DAERAH. *Kajian*, 24(4), 205-222.
7. Rachmaddiansyah, R. (2018). *Fungsi Dewan Perwakilan Rakyat Daerah Sebagai Mitra Pemerintah Daerah Dalam Pembentukan Peraturan Kepala Daerah* (Doctoral dissertation, Universitas Brawijaya).
8. Rustandi, R. (2017). Kajian Teoritis Fungsi Pemerintah Daerah Dan Dewan Perwakilan Rakyat Daerah Dalam Pembentukan Peraturan Daerah Menurut UU No. 23 Tahun 2014 Tentang Pemerintahan Daerah Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 9 Tahun 2015. *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, 4(1).
9. Sabarno, H., Asshiddiqie, J., & Widodo, A. S. (2008). Untaian pemikiran otonomi daerah: memandu otonomi daerah, menjaga kesatuan bangsa. (No Title).
10. Simandjuntak, R. (2015). Sistem Desentralisasi Dalam Negara Kesatuan Republik Indonesia Perspektif Yuridis Konstitusional. *De Jure: Jurnal Hukum dan Syar'iah*, 7(1), 57-67.
11. Somad, K. A. (2011). Kedudukan DPRD dalam Pemerintahan Daerah di Indonesia Pasca Perubahan UUD 1945. *Masalah-Masalah Hukum*, 40(4), 479-483.
12. Sugiarto, B. (2017). Analisis Yuridis Hubungan Pemerintah Daerah Dan Dewan Perwakilan Rakyat Daerah Menurut Uu Nomor 23 Tahun 2014. *Solusi*, 15(3), 343-358.
13. Supriarno, S., & Hadi, S. (2019). Kedudukan Peraturan Kepala Daerah dalam Kemitraan Antara Pemerintah Daerah dengan DPRD. *Briliant: Jurnal Riset dan Konseptual*, 4(3), 323-330.
14. UUD 1945
15. Undang-Undang Nomor 5 Tahun 1974
16. Undang-Undang Nomor 22 tahun 1999
17. Undang- Undang Nomor 32 tahun 2004
18. UU No. 23 Tahun 2014