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Legal Review Concerning Amputed Authority of DPR and DPD in The Process of Regional Propagation in Indonesia

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ABSTRACT
Article 38 Paragraph (1) of Law No. 23 of 2014 concerning Local Government as amended by Law No. 9 of 2015 concerning the second Amendment to Law No. 23 of 2014 concerning Local Government is contrary to Article 20A Paragraph (1), Article 21 and Article 22D paragraph (1) of the 1945 Constitution. Where the proposal for regional expansion proposed by Governor is takeover of authority. In the 1945 Constitution has been regulated in a limitative manner the authority given to the DPR and DPD institutionally the power to form the law and give authority to the President to submit a draft law. Author examines legal analysis of the authority of the DPR and DPD in the process of regional expansion. Type of research is normative research and qualitative descriptive form. The authority of the DPR and DPD in the process of regional expansion as regulated has been constitutionally harmed, namely the right to submit a draft law related to regional expansion and participate together to discuss the draft law which results in the process of regional expansion cannot be submitted by the DPR and DPD which has a legislative function.
Keywords: *Authority, DPR, DPD, Regional Propagation*

1. Introduction

After the amendment to the 1945 Constitution, it was further emphasized in Article 1 paragraph (3) of the 1945 Constitution that the State of Indonesia is a state of law. A. Hamid S. Attamimi, namely a state that places law as the basis of state power and the exercise of that power in all its forms is carried out under the rule of law. According to him, Rechtstaat is the bond between the state and the law that does not take place in a loose or coincidental bond, but an essential bond. From this view, it means that the power of government in a country is based on law and vice versa to implement the law in the administration of a country's government must be based on power (Hamid S. Attamimi, 1992). The 1945 Constitution has stated things that are fundamental to the formation of the State of Indonesia. Abdul Azis in his book explains that the rule of law is a state based on law and justice for its citizens, meaning that all authority and actions of state equipment or rulers are solely based on law or in other words regulated by law so that it can reflect justice for social life (Azis Hamid, 2011). As a consequence of the state based on this law, the State of Indonesia in the implementation of national and state life cannot be separated from the legal norms formed which of course are based on Pancasila and the 1945 Constitution which are abstract, general, binding and universally applicable within the framework of the Unitary State of the Republic of Indonesia. Indonesia.

The form of the state determines or describes the division of power within the state. Vertically, namely the central government and local government, horizontally is the legal division of power legislative, executive and judiciary (Mustari Pide, 1999).in the state and to give birth to equitable development, Indonesia divides the government into two, namely the central government and regional government as contained in Article 18 Paragraph (1) of the 1945 Constitution (Ricard Zeldi Putra & La Ode Muhram, 2021) With the enactment of the Law on Regional Government, it gives local governments the flexibility to run their own wheels of government by referring to the policies that have been determined in order to create better public services and welfare. Another potential with the existence of the Law can provide a new instrument for regions that want to separate themselves from their original areas which administratively have fulfilled the requirements to form a New Autonomous Region

(DOB). In the case of a proposal for the formation of a New Autonomous Region, even though it has fulfilled the administrative requirements to form a region, it will stagnate if the central government makes a moratorium policy.

So if in the implementation of the formation of a new autonomous region following the legal instruments or mechanisms as contained in Article 38 Paragraph (1) of Law Number 23 of 2014 concerning Regional Government as amended by Law Number 9 of 2015 concerning the Second Amendment to the Law Number 23 of 2014 concerning Regional Government will institutionally harm the authority of the DPR and DPD in the power to form laws and give the President the authority to submit draft laws. Therefore, the authors are interested in studying more deeply related to what will be written in the form of an accredited national scientific journal with the title "Legal Analysis of the Authority of the DPR and DPD in the Process of Regional Expansion in Indonesia".

2. Methodology

Type of the research used is normative research with an approach that focuses on the theoretical approach, the statutory approach, the case approach and is described in a qualitative descriptive form. The type of normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Marzuki, 2010). The normative juridical approach is carried out by studying, viewing, and examining several theoretical matters concerning legal principles relating to research problems. According to Soerjono Soekanto, the normative juridical approach is legal research carried out by examining library materials or secondary data as a basis for research by conducting a search on regulations and literature related to the problems studied (Soekanto & Sri Mamudja, 2001).

This research is a normative legal research used in an attempt to analyze legal materials by referring to the legal norms set forth in the laws and regulations. Data collection techniques are carried out by means of in read scientific books, magazines, newspapers and other readings related to research (Mustika & Salam, 2021). Procedure for identification and inventory of legal materials which includes primary legal materials, namely statutory regulations, secondary legal materials, namely legal literature and scientific works, tertiary legal materials, consisting of; law dictionary. The legal materials obtained, inventoried and identified are then analyzed qualitatively. For obtain correct and accurate data in this research, namely by conducting a literature study by collecting data by reading, citing, recording and understanding various literatures related to the problems studied.

3. Result and Discussion

3.1 Regulation of Regional Government in Indonesia

Government is a person, agency or apparatus that issues or gives orders(Ndaraa, 1998). Indonesia is a unitary state which according to CF Strong, a unitary state is a country organized under one central government (F. Strong, 2004). In Article 38 Paragraph (1) Paragraph (3) Paragraph (6) of Law Number 23 of 2014 concerning Regional Government as amended by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 of article 38 in first paragrapfh concerning Regional Government which reads in full as follows:

> The establishment of the Preparatory Region as referred to in Article 33 paragraph (2) is proposed by the governor to the Central Government, the People's Representative Council of the Republic of Indonesia, or the Regional Representative Council of the Republic of Indonesia after fulfilling the basic territorial requirements as referred to in Article 34 paragraph (2), and administrative requirements as referred to in Article 37.

Also Law Number 23 of 2014 of article 38 in third and six paragraph as follow :

> The results of the assessment as referred to in paragraph (2) shall be submitted to the House of Representatives of the Republic of Indonesia and the Regional Representatives of the Republic of Indonesia
>
> The results of the study as referred to in paragraph (5) are submitted by an independent study team to the Central Government for further consultation with the House of Representatives of the Republic of Indonesia and the Regional Representatives of the Republic of Indonesia

Jimly Asshiddiqe's view regarding legislation is the overall hierarchical arrangement of laws and regulations in the form of laws downwards, namely all legal products that involve the role of the people's

representative institutions together with the government or that involve the role of the government because of their political position in implementing legislative products. determined by the people's representative institutions together with the government according to their respective levels (Asshiddiqie, 2006). Positively regulates the order of statutory regulations to the extent of the principle that, for example, regional regulations must not conflict with statutory regulations of a higher level. Or in the case of the Constitution there is the phrase: the supreme law of the land (Huda, 2005).

The theory put forward by Hans Kelsen in his book on law, among others, is that legal analysis, which reveals the dynamic character of the system of norms and the function of basic norms, also reveals a further peculiarity of the law. Law regulates its own formation because a legal norm determines the way to create another legal norm, and also to a certain degree, determines the content of the other norm. Because, one legal norm is valid because it is made in a way determined by another legal norm, and this other legal norm is the basis for the validity of the first-mentioned legal norm (Kelsen, 2010).

The idea of territorial expansion and the formation of the new autonomous region has a fairly strong legal basis. Judicially, the basis that contains the problem of regional formation is contained in article 18 of the 1945 Constitution, which in essence, that dividing Indonesia's regions over large regions (provinces) and provincial areas will be divided into smaller areas. Furthermore, from the central government side, the process of discussing regional expansion that comes from various regions goes through two major stages, namely the technocratic process (technical and administrative feasibility study), as well as the political process because in addition to having to meet the technocratic requirements that have been regulated in the Law and Government Regulation, the expansion proposal must be supported politically by the DPR (Wahyun Muqoyyidin, 2013).

The main purpose and objective of the formation of the region is in order to improve the effectiveness of public services and accelerate the realization of community welfare. Local governments that regulate and take care of their own government affairs according to the principles of autonomy and assistance duties, are directed to accelerate the realization of community welfare through improvement, services, empowerment, and community participation, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice, privileges and specificities of a region in the system of the Unitary State of the Republic of Indonesia (Kusuma, 2011).

Each autonomous region that carries out the functions and principles of regional autonomy has a local government that organizes local government. The implementation of local government affairs is carried out by the Regional Government and the Regional People's Representative Council according to the principle of autonomy and assistance duties with the principle of autonomy as widely as possible in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 NRI Constitution, this is affirmed in Article 1 number (2) of Law No. 23 of 2014 concerning Regional Government (hereinafter referred to as Law No. 23 of 2014) (Esri Edhi Mahanan, 2017).

3.2 The authority of DPR and DPD in the process of regional expansion in Indonesia

The DPR has three functions, namely the legislative function, the budget function, and the supervisory function. Meanwhile, DPD has three functions, namely the legislative function, the consideration function, and the supervisory function (Zada, 2015). In a presidential system of government as a means of oversight of the president which is often used by the parliament and opposition politicians to provide an oversight and provide a threat to the person who will commit an offense.(MP, 2020)

In regional expansion, the mechanism has been accommodated in Article 38 Paragraph (1) of Law Number 23 of 2014 concerning Regional Government as amended by Law Number 9 of 2015 concerning the second Amendment to Law Number 23 of 2014 concerning Regional Government. in line with the constitutional mandate in Article 20A Paragraph (1), Article 21 and Article 22D paragraph (1) of the 1945 Constitution. Where the proposal for regional expansion proposed by the Governor is a takeover of authority that has been regulated in the 1945 Constitution. Which in the 1945 Constitution has regulated in a limitative manner, the authority given to the DPR and DPD institutionally in the power to form laws and give the President the authority to submit draft laws. In addition, Article 21 of the 1945 Constitution has given constitutional rights to members of the DPR to submit a draft law (RUU), this means that the Indonesian state has implemented a rule of law concept which is in accordance with the principle of separation of powers given to high state institutions with the principle of mutual supervision and checks and balances. In Montesquieu's theory it is explained about the division of power in a

country where power is then divided into 3 axes or better known as the trias politica, namely first, executive power (implementing laws), second legislative power (law making), third namely judicial power (law making) (Asshiddiqie, 2013). So that Article 38 paragraph (1) does not provide space regarding the proposal for the establishment of a bill as regulated in Article 43 paragraph (1) and paragraph (2) of Law Number 15 of 2019 regarding amendments to Law Number 12 of 2011 concerning the Establishment of regulations. legislation. In addition, it is also inconsistent with the theory of legislation that has long been embraced in Indonesia in the theory put forward by Hans Kelsen and Hans Nawiasky about tiered, multi-layered legislation and has its own division of groups where the lower regulations must not conflict with higher regulations (Farida Indrati Soeprapto, 2010).

Function and authority is a symbol of the relationship between the institution and its activities. The combination of tasks carried out by an institution is the operationalization of an internal function. The use of the word task cannot be separated from authority. Therefore, it is often used together, namely duty and authority. When compared with functions, or duties, the word authority has more meanings related to the law directly. By stating that an institution has the authority, it causes categorical and exclusive consequences. Categorical is an element that distinguishes between institutions that have authority and those that do not. Exclusive means making institutions that are not mentioned as institutions that are not authorized. As a consequence, for all exit consequences caused by similar activities carried out by institutions that are not authorized have no legal consequences. This categorical-exclusive nature applies horizontally, meaning that it involves relations with other institutions of equal position (Bagus Suryawan, 2020). The function of representative institutions according to Safa'at include Legislation Function (function in forming a law), Supervision Function (function overseeing the President's power), Budgeting (function for preparing APBN), and Nomination Function (function for appointment/inauguration of state officials/leaders) (Suhendra & Ray Ferza, 2015). In addition, Article 38 paragraph (1) has also taken the authority of the DPR and DPD in proposing draft laws relating to regional expansion. On the other hand, the position between the President, DPR and DPD is equal as a high state institution whose constitutional authority has been clearly regulated according to the Constitution related to the formation of laws. On the other hand, Article 38 paragraph (1) also contradicts the principle of justice and equal position in law and government in Article 6 Paragraph (1) letters g and h which means that there is an equal position in the 1945 Constitution between the President, DPR and the Government as institutions. country height.

In political practice, the constitutional legitimacy of article 22D has not guaranteed equality of roles between the DPD and the DPR. With a limited constitutional area, there are aspects of implementing regional autonomy, the space for movement and bargaining position of the DPD with the DPR is relatively limited. The linkage between the constitutional functions of the DPR and the DPD lies in both as institutions that represent the interests of the people. Both became a form of representative democracy as a result of the exercise of the right of participation of the citizens who elected the representatives of the people (Nugroho, 2011).

Article 22D Paragraph (2) of the 1945 Constitution so that the phrase "submitted" in Article 38 Paragraph (3) of Law Number 23 of 2014 concerning Regional Government as amended by Law Number 9 of 2015 concerning the second Amendment to Law Number 23 The year 2014 concerning Regional Government contradicts the 1945 Constitution. In Article 20 Paragraph (2), Article 22D Paragraph (2) of the 1945 Constitution, the discussion must be carried out by the DPR together with the President and for Regional Expansion followed by DPD so as to reflect a balanced position between the President and the Deputy President, DPR and DPD as high state institutions. On the other hand, the discussion of the bill that came from the President.

Article 22D Paragraph (2) of the 1945 Constitution so that the phrase "consulted" in Article 38 Paragraph (3) of Law Number 23 of 2014 concerning Regional Government as amended by Law Number 9 of 2015 concerning the second Amendment to Law Number 23 2014 concerning Regional Government is contrary to the 1945 Constitution or at least it is interpreted that there is a discussion process carried out between the DPR and the President which is followed by the DPD. Furthermore, if you look at the process of forming the Law regulated in Law Number 12 of 2011 concerning the Formation of Legislation, it also stipulates that a draft law (RUU) must be submitted by the President and the DPR or DPD prepared by the relevant ministers and included in the Program National Legislation (Prolegnas) and the submission of the bill must be accompanied by an academic text so that this is not in accordance with Article 38 Paragraph (1) of Law Number 23 of 2014 concerning Regional Government as amended by Law Number 9 of 2015 concerning the second Amendment on Law Number 23 of 2014 concerning Regional Government against the 1945 Constitution of the Republic of Indonesia.

Then in the process of forming the Law regulated in Law Number 12 of 2011 concerning the Formation of Legislation, it also regulates a draft Law (RUU) to be discussed together and followed up through two levels of discussion which was attended by the Government with the DPR and DPD so that According to the author, this is inconsistent with Article 38 Paragraph (3) Paragraph (6) of Law Number 23 of 2014 concerning Regional Government as amended by Law Number 9 of 2015 concerning the second Amendment to Law Number 23 of 2014 concerning Regional Government against the 1945 Constitution of the Republic of Indonesia and in the end denies existing theories and regulations in the aspect of laws and regulations in Indonesia which are based on the concept of the rule of law.

The amendment of the 1945 Constitution when viewed from a constitutional point of view, then the functions and authorities of the state are in conflict with functions and authorities, such as legislative power exercised not only by the House of Representatives, but the Regional Representative Council and the Executive (President) have the authority to propose draft laws, therefore the two institutions can also be said to be legislative institutions. One of the most fundamental changes in The Indonesian constitution is to regulate the principle of limiting power. Therefore, According to William G. Andrews: "Under constitutional, two types of limitations impinge on government. Power proscribe and procedural prescribed" Power prohibits and procedures are prescribed (Ruliah, 2018).

4. Conclusion

The authority of the DPR and DPD in the process of regional expansion as stipulated in Law No. 23 of 2014 concerning Local Government as amended by Law No. 9 of 2015 concerning the second Amendment to Law No. 23 of 2014 concerning Local Government has been constitutionally harmed, namely the right to submit a Draft Law related to regional expansion and participate together to discuss the Draft Law in accordance with the Article 20 Paragraph (1), Article 20 Paragraph (2), Article 21 and Article 22D Paragraph (2) of the 1945 Constitution and Article 65 Paragraph (1) and Paragraph (2) of Law Number 15 of 2019 against changes to Law Number 12 of 2011 concerning the Establishment of laws and regulations to determine the expansion of new autonomous regions whose authority is in Article 38 Paragraph (1) Paragraph (3) Paragraph (6) of Law No. 23 of 2014 concerning Local Government as amended by Law No. 9 of 2015 concerning the second Amendment to Law No. 23 of 2014 concerning Local Government. Then in Article 20 Paragraph (1), Article 20 Paragraph (2), 20A Paragraph (1), Article 21 and Article 22D paragraph (1) of the 1945 Constitution and Article 65 Paragraph (1) and Paragraph (2) of Law Number 15 of 2019 against changes to Law Number 12 of 2011 concerning the Establishment of laws and regulations have been violated by Article 38 Paragraph (1), Paragraph (3) and Paragraph (6) of Law No. 23 of 2014 concerning Local Government as amended by Law No. 9 of 2015 concerning the second Amendment to Law No. 23 of 2014 concerning Local Government which results in the process of regional expansion cannot be submitted by the DPR and DPD which has the function of legislation and resulting in the potential arising from other laws that will be formed by the DPR together with the President who does not accommodate and harm the authority of the DPR and DPD in the proposal and discussion of the next rule of law.

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