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## Institutional Arrangement of the Regional People's Representative Council in State Administration System of Republic of Indonesia

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### Abstract

Due to repeated changes in the operational arrangements, there is a lack of clarity about the essence of these institutions, which in turn affects their position, duties, functions, and institutional roles. This study aims to find the essence of the Regional People's Representative Council institutions in accordance with the constitutional system in the Republic of Indonesia. This study was designed in normative juridical research namely identifying, classifying, and analyzing legal materials based on the norms and principles of constitutional law. The results show that there is still no normative agreement about the Regional People's Representative Council, either institutionally as a regional legislative institution or as an element of regional government. These two methods resulted in different legal consequences. For this reason, it is necessary to redefine the Regional People's Representative Council. The research shows that institutional arrangements for the council needs to be carried out through stages: constitutional structuring; arrangement/synchronization of laws and regulations (position structure) of the council with regional government laws, electoral regulations, and arrangements in relation to the council with government institutions in the region. The conclusion is that within the framework of an ideal constitutional system, it is necessary to clarify the essence of the Regional People's Representative Council to ensure legal certainty. Clarity for the institution would greatly influence its authority, duties, and institutional functions. For this reason, institutional arrangements for the council need to proceed in stages to achieve clarity about the relevant questions.

**Keywords:** Arrangement; Essence; Regional People's Representative Council; State Administration System

### 1. INTRODUCTION

The Regional People's Representative Council in Indonesia, as the regional people's representative institution, is one of the main pillars in supporting the development of democracy at the local level. Regional democratization has been strengthening the role and function of the Regional People's Representative Council, which not only has given birth to people's freedom in

the regions to convey their aspirations but also has brought prosperity to the people through accountable and professional arrangements (Said, 2016). However, there are several factors that influence the movement of the council in fighting for people's aspirations.

Although elected through an election mechanism, the existence of the Regional People's Representative Council as a legislative body is still blurred

because the council has two capacities: it is both a legislative body and part of regional government. It is one of the state institutions referred to in the 1945 Constitution, article 18, section (3): "Provincial, regency and municipal governments have Regional People's Representatives Councils which members are elected through general elections." This means that there is a paradox, in that the regional government has a Regional People's Representative Council whose members are elected through general elections even though the elements of the regional government are the council and a regional head (governor or regent/mayor).

Second, the regional government regulates and manages government affairs according to the principle of autonomy and co-administration. The broadest governmental autonomy is carried out except for governmental affairs that are determined by law as central government affairs. Only six type of activities are absolutely with central governmental authority: foreign policy, defense, security, justice, national monetary and fiscal affairs, and religion. Activities apart from these six areas belong under the authority of the regional government as long as it can implement itself.

To carry out its work, the regional government consists of regional heads and the Regional People's Representative Council, which has the right to set regional and other regulations (Muhammad, 2016). The 1945 Constitution stipulated that the structure and procedures of regional government administration were regulated by law. As a regional representative body, the Regional People's Representative Council has legislative, budgetary, and supervisory functions exactly like the central functions of the People's Representative Council (DPR), which is regulated in the 1945 Constitution. The difference is that the function of the DPR is regulated in the constitution, while the functions of the regional council are regulated by law (Mukhlis, 2011).

A solution must be found about the confusion regarding the status and position of the Regional People's Representative Council. In terms of legal logic, one measurement parameter is on how the council is elected. If it is elected through general elections, it must be treated as a legislative body at the regional level, which means that members are not treated as ranks of the governmental bureaucracy or civil servants. Likewise, the terminology—"Regional People's Representative Council"—establishes that it is not a kind of city council (Nur Wijayanti, 2017). The conclusion is that the council should no longer be part of the central executive but must be a truly independent institution, considering that all its members are elected through elections.

Study about the position and authority of the Regional People's Representative Council touches on fundamental questions: What is the institutional qualification of the council as a state institution? Is the council firmly established as a legislative body, or is it positioned as one of the elements of the regional government? This debate heated up when the concept of the council as a legislative body in Law Number 22 Year 1999 was changed to making it an element of regional government.

There has been significant study of the Regional People's Representative Council, especially in terms of its authority, main tasks, and institutional functions, but studies to date have not touched on the essence of the institution itself. The main problem—whether the council is a representative body of the people, a regional legislative body, or part of the regional government—has not yet been studied in depth (Sunarso, 2006). Subsequent studies have been published in the form of articles in scientific journals, all focused on the position, duties, and functions within the established regulatory framework (Fauzan, 2016).

Under the 1945 Constitution, government is an organ that is led by the

president as head of government and has parts consisting of the central government, provincial government, and district and city governments. Law Number 32 of 2004 concerning regional government distinguished the definition of regional government from regional government (Ihsan, 2015). Therefore the concept of regional autonomy within the framework of the Unitary State of the Republic of Indonesia was accentuated in Law Number 23 of 2014 (Yusdianto, 2015).

Therefore, it is crucial to research the essence of the Regional People's Representative Council in accordance with the constitutional system. This research not only focuses on the position, duties, and functions that have been stipulated in laws and regulations based on the 1945 Constitution but also analyzes in depth the fundamental meaning and essence of the regional council in a broader constitutional system.

## **2. METHOD**

This study was designed in normative juridical research namely identifying, classifying, and analyzing legal materials based on the norms and principles of constitutional law. The sources of data used in this research is primary and secondary legal material that obtained from the library and official documents. Following data collection, we inventoried the various legal materials and analyzed them qualitatively, according to our study aims, to draw and formulate conclusions.

## **3. RESULTS AND DISCUSSION**

### ***Regional People's Representative Council Essence***

The unclear status and position of the Regional People's Representative Council actually originated from the 1945 Constitution itself. The constitution regulated the council in two different chapters: Chapter VI concerning regional government and Chapter VIIIB about elections. The regional government

chapter stated that provincial, district, and municipal governments had a Regional People's Representative Council whose members are elected through general elections. The chapter on general elections stated that one of the elections was for the Regional People's Representative Council, the People's Representative Council, the Regional Representative Council, and the president and vice president (Fitri, 2015).

Due to these two arrangements, the Regional People's Representative Council had two capacities. It was part of the regional government (together with the institution of the regional head) and it was a legislative body whose members are determined through elections (together with the People's Representative Council and Regional Representative Council). These two capacities were manifested in legislation governing the Regional People's Representative Council. As part of the regional government, the Regional People's Representative Council is regulated in the Law on Regional Government, while as a legislative body members are elected through Regional People's Representative Council elections regulated in the Law and Position of People's Representative Council, Regional Representative Council, and Regional People's Representative Council.

In practice, the council's role as part of regional government was more prominent than as a legislative body. The Regional Government Law stated that provisions on the Regional People's Representative Council in the Arrangement and Position Law only applied if not regulated in the Regional Government Law. Material about the Regional People's Representative Council in the Regional Government Law and the National Forestry Law overlapped. This led to provisions regarding the Regional People's Representative Council in the Arrangement and Position Law that emphasize the Regional People's Representative Council's capacity as a legislative body to be defeated by similar provisions in the Regional Government

Law which affirm Regional People's Representative Council capacity as part of regional government. The formation of the Arrangement and Position Law is the legislative domain because it was regulates the household, while the Regional Government Law is the domain of the government, because it was regulates the area which was the scope of work of the central government (Kusnadi, 2017), (Setiady, 2014).

### **Regional People's Representative Council as an Element of Regional Government**

Confirmation of the Regional People's Representative Council as an element of the regional government was established by the second amendment to the Constitution. Article 18, section (3) states, "Provincial, regency and city regional administrations have Regional People's Representatives Councils whose members are elected through general elections." Article 18, section (6) states, "The regional government has the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks." And Article 18, section (7) reads, "The structure and procedures for administering regional government are regulated in law." From the formulation: "Provincial governments, regencies and cities have Regional People's Representative Council can be interpreted as an effort to assert Regional People's Representative Council as one of the elements of regional government. (Kasmawati, 2012).

Regional People's Representative Council displacement position from the Regional Legislative Body as an element of regional government administration was certainly based on a number of dominant perspectives that adopted: first, in the unitary state system the legislative is not recognized at the regional level. The legislative body is only at the national (central) level. Therefore, the Regional People's Representative Council is not a legislative body. Second, because the Regional People's Representative Council

is not a regional legislative body, the council must be placed as one of the elements of the regional government. The Regional People's Representative Council occupies the same domain as local government in the structure of relations with the central government. Thus the council is in the regional government regime.

Implication of the Regional People's Representative Council position formulation as an element of regional government was: first Regional People's Representative Council as a political representative institution which should be a vehicle for engaging in government political processes, such as carried out the functions of articulation and aggregation, eventually being reduced to elements of government. The council was seen as more strongly in the perspective of government rather than in a political perspective. Secondly, as an element of regional government, the Regional People's Representative Council does not occupy a politically firm position. The implication was that the checks and balances mechanism could not work properly. Third, the council is also weak in terms of the central government. Because the council is an element of regional government, it is within the hierarchical structure of the regional government regime led by the president. As a result of this hierarchical structure, the council could not leave the various political processes and legal products issued by the central government (Wiyanto, 2017).

### **Regional People's Representative Council Redefinition**

Institutionally, the two council capacities were understandable; because of its functions and its members' election, the council must be regarded as a legislative body, whereas in terms of its presence in the region, that it also must be part of the regional government. The problem was that the 1945 Constitution did not mention the relationship between the central and regional government. The constitution recognized the arrangement

of relations between the central government and regional government. The constitution also only mentioned financial relations, public services, utilization of natural resources, and other resources (Santoso, 2011).

The 1945 Constitution did not regulate the relations between non-executive (presidential) institutions at the central level and institutions at the regional level. It mentioned only the relationship between the central and regional government, meaning that what was regulated was the relationship of the central/executive government with the regional head and the Regional People's Representative Council both individually and together. The implication was that the council as a regional legislative body did not have a relationship with the People's Representative Council and the Regional Representative Council at the central level. As an institution that was an important legislative field, the Regional People's Representative Council relationship was regulated with the People's Representative Council and Regional Representative Council. Especially in terms of channeling public aspirations. Not all people's aspirations in the region could be handled or become the domain of the Regional People's Representative Council. Aspirations regarding the mechanism of decision making at the local level would certainly be within the authority of the council to provide a solution. However, if these aspirations pertain to decision making at the national level, such aspirations must be conveyed to institutions at the central level (People's Representative Council and Regional Representative Council). At this point it is important to make a channel from the Regional People's Representative Council to the People's Representative Council and Regional Representative Council. In fact, this channel has never existed, so that the Regional People's Representative Council also expresses its aspirations to the central/executive government. This increasingly causes the central

government to dominate the Regional People's Representative Council.

### ***Steps for Institutional Arrangement of the Regional People's Representative Council***

#### ***a. Constitutional Arrangement***

This constitutional fact was an importance sign of the 1945 Constitution changes which further strengthened regional autonomy, especially the strengthening of the Regional People's Representative Council. At this point it is interesting to look at the proposed amendments to the 1945 Constitution from the Regional Representative Council (DPD). In terms of central-regional relations, the DPD proposes the regulation not only of relations between the central government and regional government (Regional People's Representative Council and regional heads) but relations between centers (without the word "government") and regions (without the word "government") (Muin, 2015).

The DPD's argument can be seen in Article 34, section (1) footnote of the 1945 Constitution Amendment Manuscript made by the DPD Group in the MPR, as follows:

Section 1 states clearly the relations pattern that could be regulated was the pattern of relations between the center and the regions, not only between the central government and the regional government. This sections confirms that it is not the central government who divides the authority of the state / center to the regions, but between countries (national) and regions (subnational) through the central legislature, namely the People's Representative Council and Regional Representatives Council. However, in making regulated laws the relations pattern, the People's Representative Council and Regional Representatives Council must pay attention to the specificity and diversity of the regions.

Regional Representatives Council strengthening version of the Regional People's Representative Council was also carried out by issuing the Regional

People's Representative Council as part of the regional government. There was no mention that regional governments would have Regional People's Representative Councils, as stated in Article 18, section (3) of the Second Amendment of 1945 Constitution; there was just the verbiage that "regions have Regional People's Representative Council and so on." The next reinforcement was the inclusion of three Regional People's Representative Council functions in the constitution—those of legislation, budget, and supervision. In terms of making regional regulations, the text concerning the Regional Representatives Council in the 1945 Constitution explicitly states that those who had the authority to establish regional regulations were the Regional People's Representative Council, while the regional government was only authorized to submit regional draft regulations. The Regional People's Representative Council mention that function and the granting of authority to establish regional regulations to the Regional People's Representative Council gave a strong legitimacy that the Regional People's Representative Council was an independent legislative body not subject to the wishes of the central government. (Nugraha, 2013).

#### ***b. Arrangement (Synchronization) of Legislation and Regional Government Legislation Position***

The Arrangement and Position Law is an instrument that can be used to strengthen the position of the Regional People's Representative Council, especially as a legislative body. This means that matters relating to the council are completed in the Arrangement and Position Law. Further arrangements are sufficiently regulated by the regional regulations or the Regional People's Representative Council order, both of which are products of the council itself. It is inappropriate for legislative matters to be regulated by executives, even though the executive is at the central level. The legislative body must have full autonomy to regulate its own household. If there is a

deviation due to the autonomy, the court institution should resolve it.

Institutionally there are two laws governing the Regional People's Representative Council: the Arrangement and Position Law and the Regional Government Law. But matters regarding the council must be arranged more in detail by the Arrangement and Position Law, not the Regional Government Law, for the reason that the former governs the council's character as a legislative body, while the latter further strengthens the council as part of regional government (Wicaksono, 2015).

Strengthening Regional People's Representative Council institutions law level, Arrangement and Position Law regulating Regional People's Representative Council households and the Regional People's Representative Council relationship with the central legislative (People's Representative Council and Regional Representatives Council). The Regional Government Law, however, only regulates council relations with regional heads (governors and regents/mayors).

The Arrangement and Position Law could regulate the pattern of relations of the Regional People's Representative Council with the People's Representative Council and the Regional Representative Council in terms of delivering aspirations from region to center. This pattern is important so that there is a connecting line between local and national-level aspirations. So far, relations pattern has not been created so that the individual impressions looks stand out. The Regional Government Law regulated the relations pattern between regional heads and the Regional People's Representative Council. This pattern of relations was clearly not possible in the Arrangement and Position Law because that law was only for institutions in the realm of legislative power.

Government regulation instruments, presidential regulations, and ministerial regulations, which are executive orders, are no longer regulated

by the Regional People's Representative Council. Arrangements regarding the council must be submitted to the council through both local regulations and council rules. The assumption is that the council can understand their needs, not institutions outside themselves. The Arrangement and Position Law in the Regional Government Law must be clear and firm boundaries for the Regional People's Representative Council regulations. For example, in the case of autonomy to determine remuneration of Regional People's Representative Council members, the law could determine that the amount should not be greater than the remuneration of members of the People's Representative Council and Regional Representative Council, or a percentage of remuneration for members of the People's Representative Council and Regional Representative Council. The law could determine that proposed income increases only apply to the Regional People's Representative Council so that there is no conflict of interest. The same arrangement could also be applied to the other councils (Faiz, 2016); (Harijanti & Lindsey, 2006).

### **c. Party System Arrangement**

One way to strengthen the Regional People's Representative Council is to encourage the political parties to improve the quality of proposed candidates as council members. Political parties play a big role in determining the quality of the council members. If the candidates are proposed by low-quality political parties, the quality of the selected members is substandard. Especially a proportional system that selecting the political parties more than the candidates who proposed. This system is different from the plurality-majority system, better known as the district system, which emphasizes the selected candidates. The Political Party Law stated that political parties function as a means of political education for members and the wider community. They function also as a means of political recruitment—filling political

positions through a democratic mechanism by paying attention to gender equality and justice (Kunci, 2016).

In the future, it is important to continue simplifying the party system in Indonesia with various applications of constitutional engineering. Moreover, Indonesia has implemented a presidential government system. In a presidential system, the head of state is guaranteed a term of office (fixed term) and cannot be dropped by parliament with a vote of no confidence or loss of vote support. As Scott Main stated that when examining the phenomenon of presidential systems in Latin America, "the combination of presidentialism and multipartism makes stable democracy difficult to sustain." The best match for presidential systems was a simple multiparty system, and the best example of a simple multiparty system is the United States, with only two dominant parties in the country. Other political parties are not prohibited, which has led to the existence of parties such as the Constitution Party, the Green Party, the Socialist Party, and the Libertarian Party, but they have not developed well because there has been a consolidation of party systems (Surya & Saleh, 2017).

One thing that could be considered for simplification is the application of the parliamentary threshold at the local level (Regional People's Representative Council province and Regional People's Representative Council districts/cities). Through this, only parties with significant support could sit in the Regional People's Representative Council seat so that the council management could take place more simply. The parliamentary threshold would only be applied to the People's Representative Council election. With the parliamentary threshold implementation at the local level, only political parties that have good management and support would be developed in an area. Political parties with unclear management and support would eventually disband, especially if the national-level parties did not get significant support so they could not place

their representatives in the People's Representative Council. The simplification of political parties in the regions is expected to improve the quality of the people's representatives proposed to become members of the Regional People's Representative Council (Ridwansyah, 2017).

Besides this simplification, another thing that could also be considered to improve candidates' quality for the Regional People's Representative Council would be to recognize the establishment of local parties. Only in Nangroe Aceh Darussalam can local political parties be permitted, as stipulated in Law Number 11 of 2006 concerning Aceh Governance (Eddyono, 2017). In other provinces, the formation of local political parties is not permitted, so that all political parties are forced to become national political parties. In fact, only a few parties could be considered as national political parties. The impact is that in the past candidates were recruited carelessly, regardless of the candidates' quality. The important thing there were a number of candidates names who can be submitted to the General Election Commissions and regional General Election Commissions in connection with the election agenda seeking to submit a list of legislative candidates.

If local political parties are allowed, political parties do not need to force the recruitment of as many candidates as possible, which affects the quality of existing candidates. Political parties simply stand in an area that was indeed strong and rooted in the area. Thus, the quality of the candidates will be noted and they will not be arbitrarily recruited. One day it may be possible for local political parties to grow into strong and national political parties. Thus, the construction of political parties would start from below. Today, however, political parties are forced to be big when they are born, which in turn only causes the Indonesian party system not to be strong and not rooted in society. (Faiz, 2016).

#### **d. Regional People's Representative Council Arrangement with Regional Government Institutions**

Some questions still exist: What are the authority problems faced by the Regional People's Representative Council, especially in regional government institutional relations? Authority extended had an effect problem on Regional People's Representative Council performance. And how is this problem related to the council's authority position discourse?

In addition to reformulating the Regional People's Representative Council authority, the Regional Government Law also strengthened the regional head position by introducing a regional head election system. As a consequence, the regional head is not elected and responsible to the Regional People's Representative Council, but has a quite strong political position because it gets its legitimacy from the people directly. The formal institutional arrangement of regional government was changed from "heavy legislative" to the checks and balances mechanism (Qurbani, 2014). This has two main ramifications. First, judicially, the regional head no longer submits an accountability report to the Regional People's Representative Council but merely submits an accountability statement. Consequently, the council's political capacity to reject the regional head's report, which can be followed by an impeachment proposal, is no longer explicitly available.

Second, the regional head is directly elected by the people and no longer chosen by the council. Regional heads thus have stronger political legitimacy. This allows the regional head to not always live in the shadow of fear from the council, as happened in the previous period. Also, the presence of many popular figures chosen for the council who do not come from strong political parties indicates that the regional head's political legitimacy does not always come from political parties and does not



go through politicians in the council.

In the changing political and regulatory context, the Regional People's Representative Council has faced several fundamental problems in its authority. In actualizing legislation and budgeting authority required each Regional Regulation, including the Regional Regulation that concerning the Regional Budget, determined by the regional head after obtaining the Regional People's Representative Council agreement. The authority for legislation and budgeting owned by the council could be trimmed by the central government (Aprila Sari, 2015).

#### **4. CONCLUSION**

Based on the map problem in the Regional People's Representative Council discourse, several agendas for change need to be put forward.

First, the Regional People's Representative Council needs to be restored as a regional people's representative institution that implements democracy. This is important to put forward because the council has the same characteristics as political representative institutions in general:

- a. The council is part of the sovereignty actualization principle (democracy), which requires government from, by, and for the people.
- b. Democracy also requires the division, dispersion, and balance of power among government institutions, known as the principle of the *trias politica*. In *trias politica*, power is clearly divided into legislative, executive, and judicial powers. All three reflect a balanced power relationship with checks and balances.
- c. The council is not just one of the elements of regional government administration but a political representative institution chosen by the people through general elections. The council membership consists of political parties' members selected through general election results.
- d. As an institution of political

representation, this institution is a way for the people to engage in politics, in the administration of government indirectly. This people's involvement is carried out through four main functions owned by the council: political representation functions (articulation and aggregation of interests), legislative functions, budget functions, and supervisory functions. These are carried out to build principles of representative democracy and balance of power.

Second, because it is the people's representative institution and functions as a legislative body, the Regional People's Representative Council must be regulated by the law, not in the form of regulations that are under the domain of the central government such as government regulations, ministerial regulations, or even ministerial circulars. Further arrangements can be made in the regional regulations and the Regional People's Representative Council regulations.

Third, it is necessary to reaffirm that as a people's representative institution, the Regional People's Representative Council has an equal position as the regional government partner. This affirmation of the word "parallel" is very important to show that in its implementation the council as a regional government is not in a subordinate position to the regional head or vice versa. In this equal position, the principle of mutual control and checks and balances can be realized in the administration of regional government. That mechanism provides opportunities for institutions, legislatures, and regional executives to control and balance each other. Thus, both the Regional People's Representative Council and the regional heads have political positions that are equally solid.

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