

The Position and Function of the Regional Representative Council in Constitutional System of Indonesia According to the Regional Autonomy Laws: A Shift from Legislative to Regional Executive

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How to cite : Suparto. "The Position and Function of the Regional Representative Council in Constitutional System of Indonesia According to the Regional Autonomy Laws : A Shift from Legislative to Regional Executive". *Unifikasi : Jurnal Ilmu Hukum*. 8(1). 2021.53-69. DOI : 10.25134/unifikasi.v8i1.3557

Submitted : 26-10-2020

Revised : 08-01-2021

Accepted : 22-01-2021

Abstract : This study aims to determine the position and function of the Regional Representative Council (DPRD) in the constitutional system of Indonesia. The study employed a normative legal approach and was analyzed qualitatively using secondary data. The finding revealed the position and function of the DPRD, an element of regional government administration, is currently regulated in one law, Law no. 23 of 2014 concerning Regional Government which previously regulated in the Law on the MPR, DPR, DPD, and DPRD. The DPRD has been regarded as a regional legislative council. In fact, a country adheres to the Unitary State concept do not familiar with regional legislatures. Even though, there is only one legislative council at the regional center, the DPR RI. In the previous law, Law no. 32/2004 states that DPRD has legislative, budgeting, and supervisory functions. The legislative function of the DPRD has resulted in ambiguity on the DPRD's position, a legislative council or part of the executive branch. This is because the function of legislative is to create laws owned by the legislative council. In this case, the DPR. Meanwhile, the DPRD only has the authority to formulate Perda. Based on Law no. 23 of 2014, the DPRD no longer has a legislative function. It is replaced by the function of forming a regional regulation. The DPRD which has been regarded as a regional legislative council, has begun to shift towards the regional executive.

Keywords; DPRD; Position; Regional Executive; Regional Legislature

Kedudukan dan Fungsi Dewan Perwakilan Rakyat Daerah dalam Sistem Ketatanegaraan Indonesia Menurut Undang-Undang Pemerintahan Daerah ; Pergeseran dari Legislatif ke Eksekutif Daerah

Abstrak : Tujuan dari penelitian ini adalah untuk mengetahui kedudukan dan fungsi Dewan Perwakilan Rakyat Daerah (DPRD) dalam sistem ketatanegaraan Indonesia. Metode penelitian menggunakan pendekatan hukum normatif dan di analisis secara deskriptif kualitatif dengan menggunakan data sekunder. Berdasarkan penelitian diperoleh hasil bahwa Kedudukan dan fungsi DPRD yang merupakan salah satu unsur penyelenggara pemerintahan daerah, saat ini hanya diatur dalam satu undang-undang yaitu UU No. 23 Tahun 2014 Tentang Pemerintahan Daerah, sebelumnya diatur dalam UU Tentang MPR, DPR, DPD, DPRD. DPRD selama ini dianggap sebagai lembaga legislatif daerah, padahal dalam negara yang menganut konsep susunan negara tunggal (Negara Kesatuan), tidak mengenal adanya legislatif daerah tetapi hanya ada satu lembaga legislatif yang berada di pusat yaitu DPR RI. Dalam UU sebelumnya yaitu UU No. 32 Tahun 2004 disebutkan bahwa DPRD memiliki fungsi legislasi, anggaran dan pengawasan. Fungsi legislasi yang dimiliki DPRD mengakibatkan ambiguitas mengenai kedudukan DPRD, yaitu sebagai lembaga legislatif atau bagian dari eksekutif. Sebab fungsi legislasi ialah fungsi membentuk undang-undang yang dimiliki lembaga legislatif dalam hal ini DPR, sedangkan DPRD hanya memiliki kewenangan membentuk Perda. Dalam UU No. 23 Tahun 2014, fungsi DPRD tidak lagi mempunyai fungsi legislasi tetapi diganti dengan fungsi pembentukan Perda. DPRD yang selama ini dianggap sebagai lembaga legislatif daerah mulai terjadi pergeseran kearah eksekutif daerah.

Kata kunci ; Kedudukan ; DPRD ; Legislatif Daerah ; Eksekutif Daerah

INTRODUCTION

Indonesia is a unitary state in the form of a Republic ". The structure and formation of this state are stated in Article 1 paragraph (1) of the 1945 Constitution (UUD 1945). From its structure perspective, the unitary state is a single entity. It is not founded from a combination of countries.

Accordingly, there are no other sovereign states in the country. Therefore, there is only one government in the Unitary State that holds full power and authority in determining government policies and running state government at the center and in other regions, the central government. In general, the full power is absolute and uses the principle of centralization in its implementation. In the history of the state constitution, Indonesia had implemented a centralization system at the beginning of independence until the new order era. In the new order era, the unitary state was defined as uniform and ignored the specificities of other regions.¹

This centralized system is ineffective because Indonesian citizens are heterogeneous, have a large area, and its government affairs that becoming increasingly complex. As a result, the development in Indonesia is uneven and is only centered on Java island. Accordingly, other areas outside Java are left behind. This is because they are difficult to reach by the Central Government that located in Java, the Province of DKI Jakarta. Syaukani, Gaffar, and Rasyid stated that Jakarta was more or less similar to "Batavia" in the colonial government era, which looked down on regional society and made the area only as an object of exploitation for the benefit of the people in Jakarta.²

Over time, in the context of implementing governance in the regions, Indonesia applies the principle of deconcentration which means giving or delegation of some authority by the Central Government. This is to carry out central government affairs in the regions to the regional officials. The implementation of this principle results in the formation of administrative areas and the government within them. To regulate administrative areas easily and efficiently, they are given the authority to manage their own households based on the principle of decentralization. The application of the decentralization principle creates autonomous regions. The distinctive feature of an autonomous region is they have a council or institution to represent the people's aspiration which is called the Parliament, or Bundesrat.³

Indonesia has a representative council, the house of representative (DPR). The DPR is called the high state institution because its authority is given directly by the 1945 Constitution and is categorized as a legislative institution. The DPR is a regional representative which carries out three functions to the center, the legislative function, the budget function, and the supervisory function. In its real form, the function of legislative or *regelende functie* is to make laws or law-making function.⁴ Laws are legal rules that bind and limit citizens and their scope covers the entire territory of the State of Indonesia. This legal product, the law, is the authority of the DPR as the legislative council. The formation of this can be done by mutual agreement with the President as the holder of executive power. The existence of a separate institution, the legislature to form laws becomes the characteristics that Indonesia is a constitutional state. According to Stahl, the concept of a rule of law is characterized by several elements in the following: the state applies a separation of powers based on trias political theory and the government is run according to statutory regulations (*wetmatig bestuur*). The legislative council, in this case, the DPR, indicates that Indonesia uses the trias politic theory. This means there are separate powers between the legislative, executive, and judicial institutions in running a country. The legal products or laws produced by the DPR as a legislative council are used as a reference for running the government.⁵

Apart from the DPR, Indonesia also has another representative council, the Regional House of Representatives or DPRD. Unlike DPR which is located at the center, the DPRD is domiciled in each province and the regency/City. The products made by the DPRD are also different from those made by the DPR. The DPR has functioned as a legal product maker, the laws (UU), and applies nationally

¹ Husnu Abadi, "Perubahan Konstitusi dan Implikasinya Pada Politik Hukum Kepartaian Di Indonesia", *Jurnal Mahkamah*, Vol. 3, No. 2, 2011, p. 190

² Syaukani HR, et., al., 2009. *Otonomi Daerah Dalam Negara Kesatuan*, Yogyakarta : Pustaka Pelajar, p. 38

³ *Ibid.*, p. 126

⁴ Jimly Asshidiqie, 2010, *Pengantar Ilmu Hukum Tata Negara*, Jakarta : Raja Grafindo Persada, p. 299

⁵ Zairin Harahap, 2015. *Hukum Acara Peradilan Tata Usaha Negara*, Jakarta : Raja Grafindo Persada, p. 7

to every citizen. Meanwhile, the DPRD has the authority to make legal products, the regional regulations or Perda, which only apply in the autonomous region where the institution is domiciled. Perda is a regulation made by the regional government and the DPRD to fulfill the elements of the welfare and effectiveness of a region. Local regulations exist because Indonesia is a country based on regional autonomy.⁶ Apart from forming regional regulations, DPRD also has other functions, budgeting and supervision. Different from the DPR, the DPRD only carries out the budget function for the regions. In addition, its oversight function is also limited to the implementation of regional government.⁷

Members of the DPR and DPRD are directly elected by the people through general elections (Pemilu). Each candidate for DPR and DPRD members must also be promoted by political parties participating in the General Election. However, the differences lie in the competition to get into the institution as the members. To be elected as a member of the DPR, the party of the candidate must meet the parliamentary threshold which is determined by law. Meanwhile, to be elected as the DPRD member, no threshold is required. This means every candidate for DPRD members who are nominated by a political party contesting the Election has the same opportunity to get a seat in the DPRD. Even though, nationally, the supporting political party does not pass the parliamentary threshold. For example, in the 2019 Election, the threshold for political parties to get seats in parliament was 4% of the total national valid votes. As a result, only 9 out of 14 political parties participating in the General Election passed to the national parliament. The five political parties include Hanura, Perindo, PSI, Berkarya, and Garuda failed to reach this threshold. Thus, their representatives were not entitled to sit in the national parliament or DPR. As for its fate in the regional parliament or DPRD, it is determined whether the party is able to get at least one seat or not.⁸ There are fundamental differences between DPR and DPRD, the requirements to be elected and the legal products produced. In addition, the election process for members of the two institutions is carried out through the General Election simultaneously and is also categorized as the election of members of the legislature (Pileg). Even though, there are differences between the constitutional government at the center and in the regions mentioned in Law no. 23 of 2014, The constitutional government at the center consists of the executive, legislative, and judicial branches. In the regions, on the other hand, it is carried out by the regional head and the DPRD.

Therefore, DPRD cannot be categorized as a legislative institution. If the DPRD is a legislative institution, then the DPRD will automatically become an element of governance at the center. The difference between DPRD and DPR from the legal products produced, the requirements for obtaining a different seat, and the 1945 Constitution perspectives, there are only three institutions in the legislative power, the MPR, DPR, and DPD. It is clear that there is no DPRD in the category of the legislative council. Referring to the constitution of the Indonesian state, the 1945 Constitution, DPRD cannot be categorized as a legislative institution. Therefore, the election of DPRD members and regional heads should be carried out simultaneously. This is because both of them are equal partners and also become elements in the regional government constitution. However, is that the election of DPRD members to date is not combined with regional head elections, but is combined with the election of legislative members, the DPR and DPD.

The election of DPRD members which was held simultaneously with the election of DPR and DPD members resulted in misunderstandings in the campaign season. Many candidates for DPRD consciously and unconsciously declare that they are legislative candidates (Caleg) on campaign

⁶ Suparto, "Problematisa Pembentukan Peraturan Daerah (Perda) Tentang Rencana Tata Ruang Wilayah Provinsi Riau", *Jurnal Bina Hukum Lingkungan*, Vol. 4, No. 1, 2019, p. 80

⁷ Asmawi, "Dewan Perwakilan Rakyat Daerah (DPRD) Dalam Perundang-undangan Pemerintahan Daerah dan Lembaga Legislatif Daerah", *Jurnal Cita Hukum*, Vol. 2, No. 1, 2014, p. 7

⁸ Syafrinaldi M. Husnu Abadi, dan Zul Akrial (ed.), 2015, *Hukum Dan Teori Dalam Realitas Masyarakat: Menuju Sistem Pemerintahan Berparlemen Bagi Pemerintahan Kabupaten*, Pekanbaru : UIR Press, p. 430

props, banners, billboards, posters, etc. These props are to promote and introduce their vision and mission to the public, the voters. In fact, if the DPRD is not part of the legislative council, the candidates for DPRD members cannot be called legislators. At a practical level, these mistakes are considered unimportant and have no effect. However, This will be different from a theoretical point of view.

The misconception that DPRD is part of the legislative council occurs because of the old Regional Government Law (Pemda), Law no. 32 of 2004 states that DPRD has legislative, supervisory, and budgetary functions. The functions of the DPRD are not different from the DPR. This is due to the Lawmakers no. 32 of 2004, assumes that the DPRD is identical or maybe the same as the DPR. Thus, they are given the same function. This presumption happens for three reasons. The first is in terms of name similarity. This can lead to an understanding that the two are the same. The only difference is the DPR is the legislature at the center while the DPRD is the legislature in the regions. Second, in terms of the election of members who are equally elected in the legislative elections. Finally, the DPR and DPRD are also regulated in one law, Law No.17 of 2014, concerning the People's Representative Assembly, the house of Representative Council, the Regional Representative Council, and the Regional People's Representative Council or also known as the MD3 Law.⁹ The Identification and equation of the DPRD with the DPR as a legislative council is a wrong idea and even misguided. DPRD is different from DPR. Accordingly, the DPRD should not have the same function as the DPR and should not be regulated in the same law.

Therefore, in Law no. 23 of 2014 Article 409 letter d states that “Article 1 number 4, Article 314 to Article 412, Article 418 to Article 421 of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representative Council, the Regional Representative Council, and the House of Regional People's Representatives (State Gazette of the Republic of Indonesia Year 2014 Number 182, Supplement to State Gazette of the Republic of Indonesia Number 5568), shall be revoked and declared invalid”. All of the articles that were revoked regulate the DPRD. Based on the description above, this study formulated the following research questions as follows: what is the position and function of DPRD in the constitutional system of Indonesia according to Law no. 23 of 2014 concerning Regional Government and what is the comparison of the position and function of DPRD according to Law no. 23 of 2014 and Law no. 32 of 2004 on Regional Government.

RESEARCH METHODS

This study employed normatif legal research. The legal materials were collected by literature study.¹⁰ This study also involved statue and conceptual approaches. The statue approach is conducted by examining all relevant laws on researched legal issues based on the statutory hierarchy. The result of the analysis is an argument to solve the issue at hand. The conceptual approach, on the other hand, is carried out because no legal rule applies to the problem that arises in the study. Thus, this research needed to refer to legal principles from scholars or legal doctrines perspectives.¹¹

RESULTS AND DISCUSSION

1. The Position and Function of DPRD in the Constitution System of Indonesia According to Law no. 23 of 2014 on Regional Government

After the amendment or change to the 1945 Constitution, the regulations relating to the regional government were added by two articles, Article 18A and Article 18B. The content of Article

⁹ Kemas Arsyad Somad, “Kedudukan DPRD Dalam Pemerintahan Daerah Di Indonesia Pasca Perubahan UUD 1945” *Jurnal Masalah-Masalah Hukum*, Vol. 40, No. 4, 2011, p. 480

¹⁰ HSR. Tinambunan, H. Widodo, and GA. Ahmad, ‘The Reconstruction of Revocation Againsts the Rights to Vote or to Be Voted in Public Post for Those Who Are Found Guilty in Corruption Case in Indonesia from a Progressive Legal Perspective’, *Journal of Physics: Conference Series*, 953 (2018), 012170 <<https://doi.org/10.1088/1742-6596/953/1/012170>>.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, 12th edn (Jakarta: PRENADAMEDIA GROUP, 2016). 133.

18 is also changed and consists of 7 paragraphs. Meanwhile, Article 18A consists of 2 paragraphs and Article 18B also consists of 2 paragraphs. From this change, it is clear that Indonesia is no longer implements the principle of centralization. Indonesia concentrates on the implementation of government at the center or in the regions. Regional governments consisting of provinces and districts/cities are given the authority to self-regulate the government affairs according to the principles of autonomy and assistance tasks. Article 18 paragraph (5) also states that "Regional governments carry out the widest possible of autonomy, except for governmental affairs determined by law as the affairs of the Central Government."

This change has major implications in the constitutional system of the Unitary State of the Republic of Indonesia, especially, the House of Representatives in the regions. The most obvious change is the term or mention of the name of this council. Initially, this institution was called the regional representative council. However, after the amendments to the 1945 Constitution, this institution is known as the regional house of Representative or DPRD. Subsequent changes regarding the authority of Regional Government, Article 18 paragraph (6), states that "Regional governments have the right to stipulate regional regulations and other regulations." Even though the article does not give a detailed explanation on who has the right to make regional regulations and other regulations, in paragraph (7), it is explained that "The structure and procedures for implementing regional government are regulated in law."

Therefore, it is necessary to make a law that specifically regulates the implementation of regional government. As a result, after the 1998 reformation, there were several regional government laws that were implemented. The most recent and still valid to date is Law no. 23 of 2014 concerning Regional Government. This law also regulates representative institutions in the regions known as the house of regional representative council or abbreviated as DPRD.¹²

In daily constitutional discussions, people often assuming DPRD as a legislative institution. Specifically, the candidates for DPRD members who are participating in the General Election. The billboards, banners, or other campaign props are used to promote *caleg* or legislative candidates. It covers the explanation of the position along with the vision and mission. In fact, if the DPRD is not a legislative institution, then its prospective members cannot be considered as legislative candidates. Juridically, this is not prohibited.

The assumption that DPRD is a legislative council similar to DPR is due to several similarities mentioned in the following:

1. In terms of name. DPRD stands for Regional Representative Council, while DPR stands for the house of representatives. The difference between the two is only limited to the word "Region".
2. In terms of selecting the members. DPRD and DPR are both elected through direct elections by the people. Meanwhile, their candidacy must also be promoted by political parties.
3. In terms of function. DPRD and DPR have a regulatory function (*regelende function*). According to Jimly Asshidiqie, the regulatory function is to determine regulations that bind citizens with restrictive legal norms. This is the main function of the house of representatives. The DPRD and DPR have supervision and budgetary functions.¹³
4. DPRD and DPR are representative council that reflect and represent the people

This also happened because the position of DPRD in several regional government laws often experienced shifts. In-Law no. 22 of 1999 on Regional Government, DPRD is considered as a regional legislative council. Then, in Law no. 23/2014 DPRD becomes a regional representative council which has a position as an element in the regional government constitution. This then

¹² **Ratnia Solihah & Siti Witianti**, "Pelaksanaan Fungsi Legislasi Dewan PerwakilanRakyat Pasca Pemilu 2014: Permasalahan dan Upaya Mengatasinya" *Jurnal Ilmu Pemerintahan CosmoGov*, Vol. 2, No. 2, 2016, p. 304

¹³ Jimly Asshidiqie, 2010, *Pengantar Ilmu Hukum Tata Negara Indonesia*, Jakarta : Raja Grafindo Persada, p. 199

questioned the position of the DPRD. Whether the DPRD is considered a legislative or executive institution.

In a narrow sense, the constitutional system is an institution whose authority is regulated in the 1945 Constitution. DPRD is not included in this matter. This is because the DPRD's authority is not directly regulated in the 1945 Constitution but in law. However, the existence of DPRD as a state institution cannot be denied. This is because in a broader sense, DPRD is a part of a state institution whose authority is regulated outside the Constitution.¹⁴

Even though DPRD is a state institution, this does not make DPRD as a legislative institution similar to DPR. This is because the DPRD and DPR have differences as follows:

1. In terms of the location. The DPRD is domiciled in each autonomous region, the province and the regency/city. Meanwhile, the DPR is domiciled in the Central Government, DKI Jakarta.
2. In terms of the requirements to get a seat in the institution. Candidates for DPR members who advance in the election, have to get more votes than other candidates. Furthermore, the political party that nominates the candidate must pass the parliamentary threshold which is determined by law. Meanwhile, candidates for DPRD members only need to get more votes than other candidates. Moreover, their political party has no requirement to pass the parliamentary threshold.
3. In terms of function. Even though both have a regulatory function (*regelende function*), substantially, the product results from the implementation of these functions are different. According to Jimly Asshidiqie, this regulatory function is also referred to a legislative function and is more concretely manifested in the formation of laws (*wetgevende function*/law-making function).¹⁵ In the Unitary State of the Republic of Indonesia, there is only one institution that has the power to form laws. Thus, the legislative function is only given to that institution. The power includes creating laws as stated in Article 20 of the 1945 Constitution. The institution that has the legislative function is the DPR. The legal product is a law which is a rule or law that applies nationally and binds every Indonesian citizen.¹⁶ Meanwhile, the DPRD has a function to make a regional regulation whose hierarchy is under the law and only applies in the area where the DPRD is located. Accordingly, the Perda only binds residents in the area where the regulation applies. This is not applied to all Indonesian citizens.
4. In terms of representatives. The DPRD only represents the people in the regional interest, while the DPR represents the people in the national interest.

The most substantial difference between DPRD and DPR could not turn the DPRD as part of a legislative institution. In terms of the regulatory function which is also known as the law-making function, DPRD as a representative institution does have the authority to make rules or laws called Perda. However, the concrete form of the law-making function owned by the legislative institution refers to the function of creating laws. Therefore, a house of Representatives can be categorized as a legislative institution if they have a legislative function (law-making function) such as the DPR. At least, the institution must have the authority to propose and discuss the draft of the laws, such as the DPD. This is because the manifestation of the legislative function in Indonesia is to form the laws. Thus, the DPRD that does not have the power to form laws cannot be categorized as a legislative institution. Although the DPRD has the function of forming regulations or laws, the legal product is not a law but a regional regulation.

The position of law, the statutory regulation, has a high position in the hierarchy of statutory regulations. Meanwhile, the position of local regulations is far below the law. This is a consequence of the position of DPRD which is not a legislative institution. Accordingly, the DPRD is not entitled

¹⁴ Suparto, "Teori Pemisahan Kekuasaan Negara dan Konstitusi Menurut Negara Barat dan Islam", *Jurnal Hukum Islam*, Vol. 19, No.1, 2019, p. 145

¹⁵ Jimly Asshiddiqie, 2010, *Pengantar Ilmu Hukum...Op.Cit.*, p. 201

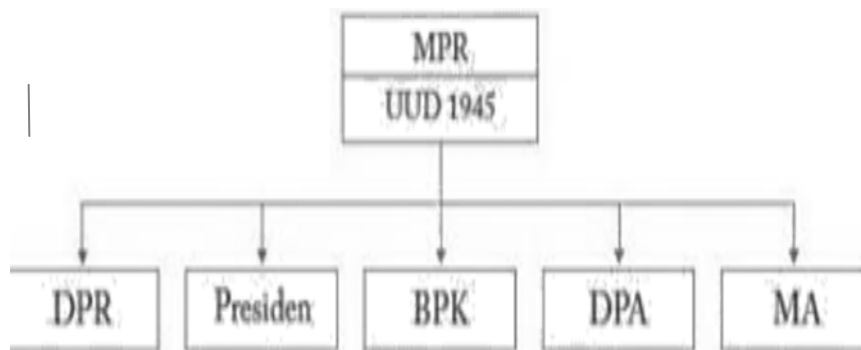
¹⁶ Jimly Asshiddiqie, 2010, *Perihal Undang-Undang*, Jakarta : Raja Grafindo Persada, p. 8

to make legal regulations apply nationally such as laws. The DPRD only has the authority to form regional regulations. Thus, the legal products made by the DPRD should not contradict the legal products made by the DPR. Even though the local laws and regulations are part of statutory regulations, they both differ in terms of effectiveness.¹⁷

The position of the Perda and the law has a hierarchical relationship. This does not indicate that they have a binding relationship. Moreover, if the DPRD is a part of a derivative institution or the result of the vertical distribution of power granted by the DPR, the DPRD is called a regional legislative institution. The term regional legislative is not familiar in the Indonesian constitutional system which originates from the constitution or UUD 1945, before the amendment or after the amendment. According to Ahmad Redi, in the Unitary State, there is only one legislative and judicial institution. The regions do not have legislative powers and the only powers that can be decentralized are the executive.¹⁸

The Indonesian constitutional system regulated in the 1945 Constitution prior to the amendment recognized the existence of the highest state institutions and high state institutions at the central level of government. Based on the 1945 Constitution and TAP MPR No.III / MPR / 1978, the MPR was determined as the highest state institution followed by the DPR, President, MA, DPA, and BPK. The positions and relationships between these institutions can be described as follows:

Chart 1.1
State institutions prior to the Amendment to the 1945 Constitution



Prior to the amendments to the 1945 Constitution, the MPR and DPR were the legislative or parliamentary institutions in Indonesia. They have different functions and duties. The parliament in Indonesia is not a bicameral parliament. However, they are still a close unity. The MPR is an incarnation for all Indonesian people and the implementer of the people's sovereignty. Therefore, prior to the amendment of the 1945 Constitution, the MPR was known as the highest state institution.¹⁹

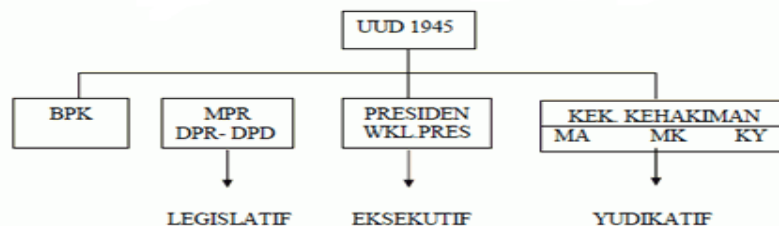
Then with the passing of the amendments, The 1945 Constitution on August 11, 2002, the Indonesian constitutional system also changed. In the 1945 Constitution, the result of the amendment no longer recognizes the existence of the highest state institution. There are only high-level state institutions. All the higher state institutions are equal, none institution is higher than the others. The relationship between all these institutions is based on the principle of checks and balances. The high state institutions cover:

¹⁷ Jimly Asshiddiqie, 2010, *Pengantar Ilmu Hukum...Op.Cit.*, p. 101

¹⁸ Ahmad Redi, *Sistem Penyelenggaraan Negara Berdasarkan UUD NRI 1945 (Makalah)*, Bogor : Pusdik MKRI, 2019, p. 26

¹⁹ Zakaria Bangun, 2020, *Sistem Ketatanegaraan Indonesia Pasca-amandemen UUD 1945 (Konstitusi dan Babakan Konstitusi Indonesia)*, Bandung : Yrama Widya, p. 146

Chart 1.2
State Institutions after the Amendments to the 1945 Constitution



In this amendment, the 1945 Constitution places state institutions equally. Thus, no institution is higher than the other. This change added one institution to the legislative power, The DPD. The judicial power which prior to the amendment of the 1945 Constitution only consisted of one institution, the Supreme Court, after this change, it consists of three institutions, the Supreme Court, the Constitutional Court, and the KY.

If we look at state institutions in the constitutional system before and after the amendment, especially regarding the legislative or parliament, there is only one additional institution. From the previous which is only consisting of the MPR and DPR. Now, one more institution is added, the DPD. It is clear that no DPRD is included in the legislative institution. All state institutions in the Indonesian constitutional system before and after the amendment to the 1945 Constitution can be seen in chart 1.1. Chart 1.2 only covers high state institutions or institutions that carry out the functions of state power. It consists of several branches or institutions whose authority given directly by the 1945 Constitution. Therefore, the DPRD does not exist there. This is because DPRD is not a high-level institution that carries out the functions of state power. The authority of DPRD is not given directly by the 1945 Constitution. The DPRD's authority is limited to the regional level, not the national level. In a Unitary State, the region is autonomous and remains as part of the territory of the Unitary State. The Unitary State has only one government, the Central Government, to carry out state government affairs at the central and regional levels. However, because the Unitary State of the Republic of Indonesia applies the principles of decentralization, deconcentration, and assistance tasks in the constitution of governmental affairs, autonomous regions are created. These then given the authority to manage their own households or government.²⁰

Even though the DPRD's authority is limited to Regional Government, it is still considered to carry the function of the state. This is because Regional Government is a sub-system of State Government or Central Government. Therefore, instead of calling DPRD a legislative, according to the writer, DPRD is more accurately to be called the executive for the following reasons:

1. In the branch of state power which consists of the executive, legislative, and judiciary, only executive or governmental power can be delegated vertically by the Central Government to Regional Governments in the Unitary State.²¹
2. Regional Government is a sub-system of the executive branch of power, the Central Government. Article 1 number 1 Law no. 23/2014 states that "Central Government is the President of the Republic of Indonesia who holds the power-assisted by the Vice President and ministers as referred to in the Constitution of the Republic of Indonesia". The power to carry out the affairs of the Regional Government is given to the Head of the Region and the DPRD. They serve as an

²⁰ Syofyan Hadi, "Fungsi Legislasi Dalam Sistem Pemerintahan Presidensiil (Studi Perbandingan Indonesia dan Amerika Serikat)," *Jurnal Ilmu Hukum DiH*, Vol. 9 No. 18, 2013, p.81

²¹ Zakaria Bangun, 2020, *Sistem Ketatanegaraan ...Op.Cit.*, p. 148

element in the Regional Government constitution based on the principles of autonomy and co-administration.

The position of DPRD as an institution in the region and an element in administering Regional Government makes the DPRD included in the branch of executive or government rather than legislative in the Indonesian constitutional system. Article 1 number 5 Law no. 23/2014 also states that "Government Affairs is under the power of government which is the authority of the President, whose implementation is carried out by state ministries and regional administrators. This is to protect, serve, empower, and prosper the community." This article states that the implementation of governmental or executive power which becomes the authority of the President is done by the minister and the administrators of the Regional Government, in this case, the Head of the Region and the DPRD. This emphasizes the position of the DPRD as an institution that carries out governmental power, the Regional Government or the executive. Although DPRD also has the power to form rules or laws known as *Perda*, this does not mean that DPRD cannot be included in the executive branch. Theoretically, the power to form the rule of law is firstly given by the legislature. However, in Indonesia, positive law is divided into several levels/hierarchies. This is part of statutory regulations which not only formed by the legislative institution. The president, the holder of executive power, is also equipped with the authority to form laws and regulations, Government Regulations in Lieu of Laws (*Perpu*), whose levels are equivalent to laws and Government Regulations (*PP*) and Presidential Regulations (*Perpres*).

Therefore, the DPRD's authority to formulate *Perda* which is also included in the prevailing laws and regulations in Indonesia, does not negate its position as an institution that carries out executive functions. Moreover, the regulations made by the DPRD and the President have similarities in terms of the finishing product. In Article 5 paragraph (2) of the 1945 Constitution, it is stated, "The President establishes Government Regulations to carry out laws properly". Then Article 22 paragraph (1) states, "In compelling circumstances, the President has the right to stipulate government regulations in lieu of laws". The two regulations made by the President use the word "determine" which means the regulation is only made by one institution, in this case, the executive, the President.

The same thing happened in the making of regional regulations. In Article 242 paragraph (1), it is stated that, "The Draft of *Perda* which has been jointly approved by the DPRD and the Regional Head is submitted by the DPRD leadership to the Regional Head to be stipulated as *Perda*". Even though there is the phrase "mutually agreed upon by the DPRD and the Regional Head", which means there are two organs or institutions involved in its formation. The word "stipulated" confirms the two organs or institutions are actually under the same branch of power. Likewise, the *Perpu*, *PP*, and *Perpres* are only formed by one institution, the branch of the executive power, in this case, the President without legislative interference. This is different from laws that must be approved by two different institutions, the legislative, in this case, the DPR and the executive, the President. Article 20 paragraph (4) states that "The President ratifies a draft bill which has been mutually agreed to become law". The word passed/ratify refers to regulations that must be approved by two institutions from different branches of power, the legislative and the executive. Meanwhile, regulations made by one branch of power, for example, those only made by the executive, use the word set/stipulate.

Furthermore, Law no. 23/2014 affirms the position of DPRD in Article 1 point 4, which reads "Regional Representative Council, hereinafter abbreviated to DPRD, is a regional representative council which is positioned as an element of Regional Government administrators ". Thus, as an institution that becomes an element of Regional Government administrators with the Regional Head, the DPRD, is an institution that is included in the executive branch of power or the power to run the government. Before Law no. 23 of 2014 was promulgated, the functions of the DPRD regulated in the old Regional Government law, the Law no. 32 of 2004. In addition, the function of DPRD is also regulated in Law no. 17 of 2014, the People's Consultative Assembly, the House of Representative

Council, the Regional Representative Council, and the Regional People's Representative Council or known as the MD3 Law. Under the MD3 Law, The DPRD at the provincial and district/city levels have the same three functions. Article 316 paragraph (1) states "Provincial DPRD has the following functions: legislation; budget; and supervision ". Then, Article 365 paragraph (1) states "DPRD in Regency/city has the following functions: legislation; budget; and supervision ".

Namun setelah UU No. 23 Tahun 2014 berlaku, fungsi DPRD hanya diatur dalam satu undang-undang, yaitu undang-undang pemerintahan daerah yang berlaku saat ini. Lebih lanjut, dalam penjelasan atas UU No. 23 Tahun 2014 menyebutkan "Sebagai konsekuensi posisi DPRD sebagai unsur penyelenggara Pemerintahan Daerah maka susunan, kedudukan, peran, hak, kewajiban, tugas, wewenang, dan fungsi DPRD tidak diatur dalam beberapa undang-undang namun cukup diatur dalam Undang-Undang ini secara keseluruhan guna memudahkan pengaturannya secara terintegrasi".

However, after Law no. 23 of 2014 applies, the function of DPRD is only regulated in one law, the current regional government law. Furthermore, Law no. 23/2014 states "As a consequence of the position of DPRD, an element of Regional Government administrators, the composition, position, role, rights, obligations, duties, powers, and functions of DPRD, are not regulated in several laws but are sufficiently regulated in this Law as a whole. Thus, the management can be easily done in an integrated manner". In addition, Article 409 letter d states "Article 1 number 4, Article 314 to Article 412, Article 418 to Article 421 of Law No. 17 of 2014 concerning MD3 (State Gazette of the Republic of Indonesia of 2014 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 5568), is revoked and declared invalid". All of the articles regulate the DPRD. The revocation of several articles in the MD3 Law which regulate the DPRD is in line with the DPRD's position, an institution carries out government or executive power, the organizer of regional government affairs. Therefore, the DPRD should not be regulated in laws governing legislative institutions such as the MD3 Law. However, it should be included in the Law on Regional Government. In general, the functions of DPRD in province and Regency/city in Law no. 23 of 2014 are the same. The difference lies on the area of action. The general functions of the DPRD in this law include; formation of local regulations, budget, and supervision. The function of the Provincial DPRD in this Law is contained in Articles 96 to Article 100 which will be further elaborated. Article 96 paragraph (1) states "Provincial DPRD has the following functions;

1. The establishment of provincial regulations;
2. budget; and
3. supervision

Furthermore, in the same article, in paragraph (2) states "The three functions as referred to in paragraph (1) are carried out within the framework of the people's representation in the Provincial Region". Furthermore, paragraph (3) explains that "In order to carry out the functions referred to in paragraph (1), the Provincial DPRD captures the aspirations of the community."

Regarding the procedure for the formation of the Provincial *Perda* is regulated in Article 97 which reads "The function of forming the Provincial *Perda* as referred to in Article 96 paragraph (1) letter a is implemented by:

- a. discuss with the governor and approve or disapprove of the draft provincial regulation;
- b. submit a proposal for a draft of Provincial *Perda*; and
- c. compile the program of *Perda* formation with the governor.

Article 98 paragraph (1) states "The program for the formation of provincial regulations as referred to in Article 97 letter c contains a list of the order and priorities of the draft of Provincial regulation made in one fiscal year". Article 98 paragraph (2) states "In determining the program for the formation of a Provincial *Perda* as referred to in paragraph (1), the Provincial DPRD coordinates with the governor."

Meanwhile, the budget function is regulated in Article 99 paragraph (1) and (2). Article 99 paragraph (1) states "The function of the budget as referred to in Article 96 paragraph (1) letter b is realized in the form of discussion for joint approval of the draft of Provincial *Perda* on Provincial APBD proposed by the governor". Article 99 paragraph (2) states "The budget function as referred to in paragraph (1) is carried out using the following ways:

- a. discussing the KUA and PPAS arranged by the governor based on the RKPD;
- b. discussing the draft of Provincial *Perda* on the provincial APBD;
- c. discussing the draft of Provincial *Perda*, the changes to the provincial APBD; and
- d. discussing the draft of Provincial *Perda*, the Accountability of the provincial APBD. "

The supervisory function of the provincial DPRD is regulated in Article 100. Article 100 paragraph (1) states "The supervisory function as referred to in Article 96 paragraph (1) letter c is realized in the form of supervision of:

- a. The implementation of provincial *Perda* and governor regulations;
- b. The implementation of other laws and regulations, the administration of provincial Regional Government; and
- c. The implementation of follow-up to the results of the audit of financial reports by the Supreme Audit Agency ".

Article 100 paragraph (2) states "In doing the supervision, the implementation of follow-up results of the audit of financial reports by the Supreme Audit Agency as referred to in paragraph (1) letter c, the provincial DPRD is entitled to obtain reports on the results of financial audits conducted by the Supreme Audit Agency. Paragraph (3) states "Provincial DPRD shall discuss the audit report on financial statements as referred to in paragraph (2)". Paragraph (4) states "Provincial DPRD can ask for clarification on the audit report findings of financial report to the Supreme Audit Agency". Furthermore, the function DPRD in Regency/City, in this Law, stated in Article 149 to Article 153. Article 149 paragraph (1) reads: DPRD in "Regency/city has the following functions:

- a. Establish *Perda* in a Regency/City;
- b. budget; and
- c. supervision."

Article 149 paragraph (2) states "The three functions referred to in paragraph (1) are carried out within the framework of people's representation in regencies/cities". Paragraph (3), in the same article, states "To carry out the functions referred to in paragraph (1), DPRD of the Regency/City captures the aspirations of the community." Furthermore, the function of forming a regional regulation is regulated in Article 150 which reads "The function of forming *Perda* of a Regency/City as referred to in Article 149 paragraph (1) letter a is implemented by:

- a. Having a discussion with the regent/mayor and approving or disapproving the draft of Regency/City Regulation;
- b. Submitting the proposals for the draft of *Perda* of Regency/City; and
- c. Formulating a program for the formation of a *Perda* of Regency/City with the regent / mayor. "

Article 151 paragraph (1) states "The program for the formation of *Perda* of a Regency/City as referred to in Article 150 letter c covers a list of the order and priorities of the *Perda* draft in Regency/City to be discussed in one fiscal year." Similarly, paragraph (2) in the same article states "In determining the program for the formation of *Perda* in a Regency/City as referred to in paragraph (1), the DPRD in Regency/City coordinates with the regent/mayor".

The budget function is regulated in Article 152. Article 152 paragraph (1) reads "The budget function as referred to in Article 149 paragraph (1) letter b is realized in the form of discussion for mutual approval of the Draft of *Perda* of Regency/City, The APBD of Regency/City APBD proposed by regent/mayor ". Article 152 paragraph (2) states "The budget function as referred to in paragraph (1) is carried out as follows:

- a. discussing KUA and PPAS prepared by regents/mayors based on RKPD;
- b. discussing the draft of Perda, the APBD Regency/City;
- c. discussing the draft of Perda, the changes to the APBD Regency/city; and
- d. discussing the draft of Perda, the accountability for implementing the APBD Regency/city”.

Meanwhile, the Supervision Function of DPRD in Regency/City regulated in Article 153. Article 153 paragraph (1) reads “The supervisory function as referred to in Article 149 paragraph (1) letter c is realized in the form of supervision as follows:

- a. The implementation of Perda in regency/city and regent/mayor regulations;
- b. The implementation of the provisions of other laws and regulations related to the administration of Regency/city of Regional Government; and
- c. The implementation of the results follow-up of the audit of financial reports by the Financial Audit Agency. ”

Article 153 paragraph (2) states "In doing the supervision of the implementation of follow-up results of the audit of financial reports by the Supreme Audit Agency as referred to in paragraph (1), The DPRD in Regency/City are entitled to receive reports on the results of financial audits conducted by the Supreme Audit Agency". Paragraph (3) reads " the DPRD in Regency/city shall conduct discussions on the audit of the financial report as referred to in paragraph (2)". Article 153 paragraph (4) reads " the DPRD Regency/city can ask for clarification of the audit report findings on financial reports to the Supreme Audit Agency". The implementation of DPRD functions in Law no. 23 of 2014 is in line with the term naming or nomenclature of the function. Particularly, the function of forming a regional regulation. In the previous regional government law, the Law no. 32 of 2004, the implementation of the formation of *Perda* by DPRD is also known as the legislative function. The same thing happened in the MD3 Law, the Law no. 17 of 2004. In this law, the authority to form regional regulations by the DPRD is also referred to as the legislative function. Meanwhile, the legislative function refers to the function of laws-making owned by the legislative institution, the DPR. Meanwhile the DPRD does not have the authority to form laws. On this basis, the nomenclature of the legislative function is no longer used in Law no. 23 of 2014, and is replaced by the term 'formation of regional regulations.

2. The Comparison of the Position and Function of DPRD in the Constitutional System of Indonesian State according to Law no. 23 of 2014 and Law no. 32 of 2004

The position of the DPRD in Law no. 23/2014 is a regional representative council that is positioned as an element of regional government administrators. Therefore, in the constitutional system of the Unitary State of the Republic of Indonesia, DPRD is not included as a legislative institution. This is because DPRD is one of the elements in administering regional government with the Regional Head. Regional Government is the delegation of executive power from the Central Government to Regional Governments. Thus, the DPRD, a regional representative council, positioned as one of the organizing elements, is an institution that carries out government or executive functions.²²

The position of the DPRD in Law no. 32 of 2004 is also the same as that regulated by Law no. 23 of 2014. In Article 40 of Law no. 32/2004 states that "DPRD is a regional representative council that serves as an element of regional government administrators". The elements of running regional government apart from DPRD are also the same, the Head of the Region. These two laws state that the position between DPRD and Regional Head is equal. They are equal partners even though they also have different functions. Law no. 32 of 2004 states that "equal position means that all regional government agencies are the same and have equal position. In other words, they do not supervise

²² Nila Trisna, “Tinjauan Hukum Hubungan Kemitraan Antara Eksekutif dan Legislatif Dalam Penyelenggaraan Pemerintah Daerah”, *Jurnal Public Policy*, Vol. 3, No. 2 , 2017, p. 230

each other". However, the position only occurs when the two institutions are equally elected by the people. Thus, the legitimacy of their power comes from the people.²³ UU no. 32 of 2004 stipulates that the regional head is directly elected by the people. This is stated in Article 56 paragraph (1), "Regional heads and deputy regional heads are elected in one pair of candidates which is implemented democratically based on the principles of direct, general, free, secret, honest, and fair".

Meanwhile, Law no. 23 of 2014 does not clearly regulate regional head elections. Article 62 states "Provisions regarding regional head elections are regulated by law". This is because the law on regional head elections is regulated by a separate law. This law gives an authority to the DPRD to elect regional heads. This is regulated in Article 101 paragraph (1) letter d, which states that the provincial DPRD has the duty and authority to elect the governor. Article 154 paragraph (1) letter d also states that the provincial DPRD has the duty and authority to elect the regent/mayor.

This shows the inconsistency of forming Law no. 23 of 2014. This is because in the explanation, it is stated that the position of the institution is equal and serve as a partner with different functions. If they have an equal position in the Regional Government, the DPRD should not be given the authority to elect regional heads.²⁴ However, in the end, the article regulates the authority of DPRD to elect regional heads was revoked/abolished through Government Regulation in Lieu of Law of the Republic of Indonesia No. 2 of 2014, the Amendments to Law Number 23 of 2014, the Regional Government. Finally, the *Perpu* was passed into law, Law no. 2 of 2015, the Stipulation of Government Regulations in Lieu of Law No. 2 of 2014 concerning the Amendments to Law No. 23 of 2014, the Regional Government turns into Law.

According to these laws, the function of DPRD is technically the same. However, Law no. 32 of 2004 on Regional Government mentioned a nomenclature or the term "legislation" in Article 41 which states "DPRD has legislative, budgeting, and supervisory functions." Article 141 paragraph (1) which reads: "The Draft of *Perda* is submitted by members, commissions, joint commissions, or DPRD organs that specifically handle the field of legislation".

The term legislation in Law no. 32/2004 mentioning one of the DPRD's functions, the legislative function that causes confusion and ambiguity on the DPRD's position as an executive or legislative institution. Even though Law no. 32 of 2004, the position of DPRD is the same as that stipulated in Law no. 23 of 2014. Article 40 of Law no. 32 of 2004 states that, "DPRD is a representative council for the regional people and serves as an element in administering the regional government". Meanwhile, Law no. 23 of 2014, the DPRD has the following function; formation of *Perda*, budget, and supervision. The difference between Law no. 23 of 2014 with Law no. 32 of 2004 is in the terminology. Even though one law mentions the legislative function and the other mentions the function of forming a *Perda*, technically, this function remains the same, the function to form a regional regulation.

The mention of the term legislation, Law no. 32 of 2004, caused ambiguity to see the position of the DPRD as a legislative or executive body. This is because the legislative function should only be embedded in the legislative institution. The institution that has the authority to form laws. Meanwhile, in the law, it is stated that DPRD is an institution that has a position as an element of regional government administrators. Therefore, DPRD is more suitable to enter the executive branch and does not have a legislative function.²⁵

²³ Henni Rahayu Handayani, "Tinjauan Yuridis Kedudukan Kepala Daerah dan DPRD Dalam Pembentukan Peraturan Daerah Menurut UU No.32 Tahun 2004 Dihubungkan Dengan UU No.12 Tahun 2008 Tentang Perubahan Kedua Atas UU No. 32 Tahun 2004 Tentang Pemerintahan Daerah", *Jurnal Surya Kencana Dua*, Vol.3, No. 2, 2016, p. 76.

²⁴ M. Syarif Hidayatullah, "Pemilihan Umum Dewan Perwakilan Rakyat Daerah (DPRD) Dalam Kerangka Negara Kesatuan Republik Indonesia (Studi Kasus Pada Pemilu Serentak Nasional 2019)", *Jurnal Jurist-Diction*, Vol.3, No. 3, 2020, p. 1067-1082.

²⁵ Wulan Pri Handini, "Problematika Kedudukan DPRD Diantara Kekuasaan Legislatif dan Eksekutif", *Majalah Hukum Nasional*, No.1 Tahun 2019, p. 144

Therefore, in Law no. 23 of 2014, the term of legislative function in DPRD is changed to the function of forming regional regulations. This was done to avoid misunderstanding in seeing the position of the institution. This is because if DPRD is given a legislative function, DPRD will be the same as DPR and can be categorized as a legislative institution.²⁶ Article 403 of Law no. 23/2014 states that "All provisions on regional legislative programs and regional legislative institution existed before this Law implemented, must be read and interpreted as a program for the formation of Perda and bodies for the formation of Perda, as long as they do not contradict this Law". The difference lies in the provisions that specifically regulate the implementation of these functions. Law no. 23/2014 states there is an article that specifically mentions the provisions on the implementation of the three functions of the DPRD. Meanwhile, Law no. 32 of 2004 states there is no article that specifically covers the implementation of these three functions. In the explanation of Law no. 32 of 2004 states that "The composition and position of DPRD which includes membership, leadership, functions, duties, powers, rights, obligations, interim replacement, fittings, protocols, finance, rules and regulations, prohibitions and sanctions, are regulated separately in the Law on the composition and position of the MPR, DPR, DPD, and DPRD (MD3). These things have not been adequately regulated in this Law. Thus, further regulation to affirming and complementary purposes are regulated in this law. " Law no. 23/2014 confirms the regulations on the composition, position, roles, rights, obligations, duties, powers, and functions of DPRD are only regulated in this law. Thus, the provisions governing DPRD in the MD3 Law are no longer valid. This is confirmed in Article 409 letter d which states, "Article 1 number 4, Article 314 to Article 412, Article 418 to Article 421 of Law no. 17 of 2014 concerning MD, revoked and declared invalid".

CONCLUSION

The position and function of DPRD as one of the elements in administering regional government, is only regulated by DPRD in terms of the composition, position, function, rights, and others. This was previously regulated outside the regional government law, the MD3 law which revoked and no longer valid. This is confirmed in Article 409 of Law no. 23 of 2014. This also finally answers the question on the position of the DPRD which has been associated with the legislative institution, the DPR. The DPRD is often referred to as the regional legislative institution. Meanwhile, in the Indonesian constitutional system, there is no regional legislature. This is a consequence of the concept of the single composition of the Indonesian state or the so-called Unitary State. In a single country or Unitary State, there is only one legislative institution at the center, in this case, the DPR RI. The DPRD serves as a legislative institution because the naming of this institution is almost similar to the DPR. In addition, the regulation on DPRD is regulated in the MD3 Law. In the MD 3 Law, DPRD is given the same function as the DPR, the function of legislation, budgeting, and supervision.

The legislative term existed in the previous regional government law emphasized in Article 403, "all provisions on the regional legislative program (prolegda) and regional legislative bodies (balegda) that existed before this law, must be interpreted as a program for the formation and the body for a regional regulation, as long as it does not contradict this law". In Law no. 23 of 2014, the position of the DPRD is reaffirmed according to its actual position, the regional representative council which is positioned as an element of regional government administrators. Accordingly, in the Indonesian constitutional system, the DPRD is part of the executive, not the legislative. This is because DPRD carries out government functions which are explicitly stated in this law, Regional Government is administering the government affairs by the regional government and the regional representative council. This is also reinforced by the change in the function of DPRD which a

²⁶ Sunanda Haizel Fitri, "Kedudukan Dewan Perwakilan Rakyat Daerah Dalam Penyelenggaraan Pemerintahan Daerah Berdasarkan UU No. 23 Tahun 2014", *Jurnal Online Mahasiswa (JOM)*, Vol. II, No. 1, 2015, p. 10

legislative function previously to the function of forming a *Perda*. The position of the DPRD in Law no. 23 of 2014 and Law no. 32 of 2004 are as regional representative council that act as elements of regional government administrators. However, in Law no. 32/2004, DPRD has legislative, budgeting, and supervisory functions. The legislative function of the DPRD has resulted in ambiguity on the DPRD's position, The legislative body or as a part of the executive branch. This is because the legislative function serves to form the laws owned by the legislative institution, in this case, the DPR. The DPRD, on the other hand, only has the authority to formulate *Perda*. Furthermore, in Law no. 23 of 2014, the DPRD no longer has a legislative function and is replaced by the function of forming a regional regulation. Besides, the position and implementation of DPRD functions are completely regulated in this law. Meanwhile, Law no. 32 of 2004, the position and implementation of DPRD functions, is not regulated in this law but is regulated in the MD3 Law.

SUGGESTION

The position of the DPRD is administering regional government with the Regional Head. Accordingly, they should not be separated including in terms of filling their second positions. The electoral lawmakers should have separated the DPRD elections from the legislative elections (pileg), the DPR and DPD. This is because DPRD is not a legislative institution, and does not carry out its function at the national level. Thus, elections should be divided into two levels, the elections at the national level and at the local level. The election of DPRD members is carried out simultaneously with the election for Regional Heads at the local level. Legislators are expected to make new laws regarding the composition and position of the legislative institution that excludes any provisions on DPRD. The Provisions of DPRD should be included in the law on regional governance. Thus, the confusion on the DPRD's position as a legislative institution does not appear again

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