

# ANALYSIS OF THE FUNCTION AND ROLE OF THE DPRD AS THE MANDATE OF THE PEOPLE VIEWED FROM THE PERSPECTIVE OF LEGAL PHILOSOPHY

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**Abstrak.** Local government has a dual function of holding executive and legislative powers. Meanwhile, the DPRD acts as a managing or controlling institution which can approve certain changes or reject them altogether. However, the DPRD may occasionally submit proposals on its initiative regarding draft regional regulations. This study uses a qualitative approach, namely the approach used by researchers based on data stated by respondents orally or in writing, governing it by the legal hierarchy in Indonesia. Whereas the DPR/DPRD as people's representative institutions and functioning as legislators should form a law that does not deviate from the purpose of the law, namely to provide certainty to the community, justice to the community, and benefits to the community. In this case, the law is a tool to regulate the social balance, and the interests of society to realize the ideals of society. The formation of laws and regulations must also pay attention to the Theory and Objectives of Legal Politics, namely the policies of state administrators in the field of law that have been in effect, are in force, and will be in effect, sourced from the values prevailing in society to achieve the aspired goals of the state.

**Keywords:** Role of DPRD; Formation of Laws; Effectiveness.

## INTRODUCTION

The objective of public improvement is to understand an equitable and prosperous society similarly really and profoundly, in which national development is the development of the whole Indonesian human being, and this development, the Central Government has handed over part of its governmental authority to the Provincial Legislatures to direct and oversee family undertakings or organization in their separate districts inside the arrangement of the Unitary Condition of the Republic of Indonesia or what is known as the standard of Decentralization (Syaukani, 2011).

Recognizing the role and position of the people as owners of government is one of the characteristics of a democratic nation (the people have a government). The people own the government, and they have control over its sovereignty. This shows that the roles and functions of the people determine whether the government has the power to exercise social control over its operations. According to this paradigm, governance must be in line with the goals or ideals of the people. In other words, the people must recognize the legitimacy of the ruling authority. Indonesia as a democratic country also adheres to the notion of people power. In the Indonesian government system, people's legitimacy is represented by people's representatives who sit in the DPR and DPRD as representatives of the community.

Article 2 paragraph (1) after the amendment of the 1945 Constitution also indicates that Indonesia firmly recognizes people's sovereignty. The content of Article

2 paragraph (1) is "sovereignty is in the hands of the people and implemented according to the Constitution".

A significant problem arises when the idea and concept of popular sovereignty are put into practice, namely how to do it. The idea of popular sovereignty is difficult to practice in modern times because not everyone can be given the authority to run the government. This can create obstacles or even chaos in carrying out state functions. The granting of authority to people's representative bodies or institutions to represent sovereign power in a nation is the answer to implementing this principle. The teachings of popular sovereignty hold the view that sovereignty must lie with the people, the need for future certainty is not the monopoly of individuals or groups of people but is the need of all the people in a country, and this view forms the basis of how people's sovereign power is generally exercised in a modern democracy by a body representative, namely the parliament or in Indonesia commonly known as the People's Representative Council. However, the history of the Indonesian nation from the beginning of independence until the New Order era has placed the people in a weak position (strong state and weak society), where the values and meaning of sovereignty have eroded due to the strong power of government. Therefore, people's sovereignty is still considered a value concept only. The people's weak position as a result of the authoritarian system of the New Order rulers also has implications for the weak role and position of DPRD as a vehicle for democracy and people's

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sovereignty at the regional level. The weak role and position of the DPRD have resulted in very limited gaming power of the DPRD, and the DPRD is only a pseudo-democratic symbol and a complement to the Indonesian system of government, especially in the regions. It resulted in the people could not express their sovereignty in the governance process.

The administration of regional government in the Unitary State of the Republic of Indonesia has experienced a shift from a centralized pattern during the enactment of Law Number 5 of 1974 concerning Fundamentals of Regional Government (Indonesia, 1974), to a decentralization pattern which was marked by the birth of Law Number 22 of 1999 concerning Regional Government (Indonesia, 1999) and Law 32 of 2004. The presence of Law Number 32 of 2004 as a fruit of reform is a new milestone in the administration of regional government and brings about a series of changes, both philosophically, in paradigms, mechanisms, and operational arrangements. Law Number 32 of 2004 has quite basic philosophical and paradigm differences when compared to the previous Law. Whereas the implementation of regional government is carried out by the regional head together with DPRD. The DPRD has an equal position and is a partner of the local government. Because they do not supervise each other, this indicates that the DPRD as a regional government institution is in an equal and side-by-side position in a working partnership with the local government. By their respective responsibilities and roles, the DPRD and the Regional Government synergize to

formulate regional policies that will implement regional autonomy. As a result, the two institutions should continue to work together in harmony and help each other rather than act as rivals or competitors.

Local government has a dual function of holding executive and legislative powers. While the DPRD acts as a controlling agency that can agree with certain changes or even reject them altogether. However, the DPRD may occasionally submit proposals on its initiative regarding draft regional regulations.

This article does not explicitly state that the DPRD must give the initiative to draft a regional regulation which will eventually become a regional regulation. The context is more towards the pattern of relationships that are developed are partnerships and partnerships.

Regulation Number 22 of 2003 concerning the Construction and Position of the MPR, DPR, DPD, and DPRD, has affirmed that the Regime/Metropolitan DPRD is a territorial group's delegate foundation. As a locale/city provincial government organization (article 76). Regime/City DPRD has the accompanying capabilities: 1. regulation; 2. spending plan; and 3. oversight. (Article 77 Regulation 22 of 2003) (Indonesia & Tunggal, 2003).

Article 78 of Law Number 22 of 2003 paragraph (1) "The Regency/City DPRD has the following duties and authorities: 1. To frame provincial guidelines which are examined with the Official/City chairman for common endorsement; 2. Decide the Rule/City APBD along with the Official/Chairman; 3. Do management of the execution of provincial guidelines and

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different regulations and guidelines, Official/City hall leader Declarations, Territorial Spending plans, local government approaches in carrying out provincial advancement projects, and global participation in the districts; 4. Propose the arrangement and excusal of the Official/representative Official or City chairman/Delegate Chairman to the Priest of Home Issues through the Lead representative; 5. Provide opinions and considerations to Regency/Municipal regional governments regarding plans for international agreements that concern regional interests; and 6. Ask for a report on the accountability of the district head/mayor in the implementation of decentralization tasks.

Although currently, the DPRD has a strategic role, there are still questions about how far this DPRD has carried out the duties and functions assigned to it, especially in the area of legislation. DPRD should be a source of initiatives, ideas, and concepts regarding various regional regulations that will bind the community because they are the ones who know what the local community wants. The implementation of DPRD functions must be carried out as a representation of the community as stated in Article 343 paragraph (2) of Law number 27 of 2009 concerning the MPR, DPR, DPD, and DPRD. Most statutory regulations are formulated and prepared by the Regional Head, while the DPRD only needs to discuss and approve them. There are almost no laws made at the initiative of the DPRD.

## **MATERIALS AND METHODS**

The study uses a qualitative approach, namely the approach used by researchers based on data stated by respondents orally or in writing, as well as an actual behavior, researched and studied as a whole (Soekanto, 2012). The approach taken by the author is an approach to the concept of legislation, meaning that the author compares the suitability of the data obtained with the laws that regulate it according to the hierarchy of laws in Indonesia.

## **RESULTS AND DISCUSSION**

### **The Role of the DPRD/DPRD in Forming Legislation**

Connected with the Foundation of Regulation, Article 43 section (3) of Regulation no. 12 of 2011 concerning the Foundation of Regulation and Guidelines makes sense of that each Draft Regulation should be joined by a Scholastic Paper. The definition of Academic Papers is also explained in Article 1 number 11 of Law no. 12 of 2011 concerning the Establishment of Legislation, namely in short, Academic Papers are the results of research that underlies the proposed Draft Law which must be included together with the Draft Law to be submitted. Apart from functioning as a process for drafting laws, this also serves as a basis on which legislators can be held accountable scientifically. (Rajab & Subroto, 2017)

Academic Papers are also used in guidelines or instructions to explain the Draft Law that is being worked on, including a description of the framework, the purpose of the Arrangement being made, and an explanation of each Article

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that was initially unclear. And most importantly, academic papers are useful in completing the judicial review submitted to the Constitutional Court.

So, in this situation, making academic texts is very important to study and understand further. For legislators to make good laws and regulations that meet everyone's needs, it is important that they fully understand the draft law and all relevant provisions. (Rajab & Subroto, 2017)

Formal and material standards in the development of legitimate Indonesian regulations and guidelines, these standards can be set up consecutively as keeps:

- a. The beliefs of Indonesian regulation, the goals of Indonesian regulation are, in all honesty, Pancasila. What is the ideal of the Indonesian nation is what is contained in the precepts of the Pancasila.
- b. The standard of the state depends on regulation and the guideline of government depends on the Sacred framework. The fundamental norms of the state are none other than Pancasila, and these precepts are also the norm.
- c. other principles
  - (1) The standard of the state in light of regulation spots regulations as an exceptional administrative device under the supremacy of regulation
  - (2) the standards of government in light of the established framework which puts the Law as the premise and breaking point for the execution of government exercises.

The standard of framing great regulations and guidelines as indicated by Regulation No. 10 of 2004 as expressed in

articles 5 and 6 is planned as follows: (Novendra, 2019)

- a. clarity of direction That the motivation behind laying out these regulations and guidelines is clear in light of a legitimate concern for every one individuals.
- b. the right forming institution or official That the Formation of the Legislation has been formed by the right official or institution.
- c. suitability between types, hierarchies, and payload materials; That the contents are very clear and appropriate and do not conflict with each other.
- d. can be carried out; That the viability of these Regulations and Guidelines should be considered both juridically, humanistically, and thoughtfully.
- e. usability and effectiveness; That the aforementioned Laws and Regulations are made clear to benefit all Indonesian people
- f. clarity of the formulation That the said Laws and Regulations are clear and understandable to those who read them, both in terms of the use of words and language.
- g. openness. That the Process of Forming Legislation is carried out in a transparent and open manner

The principles referred to in article 5 are explained in the elucidation of article 5 as follows:

- a. The standard of lucidity of direction is that each plan of regulations and guidelines should have clear goals to be accomplished
- b. The institutional standard of framing the right organ is that each sort of legal guideline should be made by an

- approved foundation or official shaping legal guidelines. These regulations and guidelines can be dropped or invalid and void on the off chance that they are made by an unapproved establishment/official
- c. The standard of similarity between the sort and content material is that in the development of regulations and guidelines, one should focus on the substance material that is suitable to the kind of regulation.
  - d. The rule that can be executed is that any type of regulations and guidelines should consider the adequacy of these regulations and guidelines in the public arena, both rationally, juridically, and humanistically.
  - e. The standard of convenience and adequacy is that each regulation and guideline is made in light of the fact that it is required and helpful in managing the existence of society, country, and state.
  - f. The standard of lucidity of plan is that every regulation and guideline should meet the specialized prerequisites for the arrangement of legal guidelines, efficiently and the selection of words or phrasing, as well as the lawful language is clear and straightforward, so as not to cause different understandings in its execution
  - g. The guideline of receptiveness is that during the time spent framing regulations and guidelines beginning from arranging, planning, readiness, and conversation, it is straightforward and open. Accordingly all degrees of society have the largest conceivable chance to

give input during the time spent shaping regulations and guidelines.

In the mean time, the rules that should be contained in the items in the Regulations and Guidelines in the Republic of Indonesia are formed in article 6 as follows: Article 6

- (1) The contents of the Legislative Regulations contain the following principles:
  - a. protection
  - b. humanity
  - c. nationality
  - d. kinship
  - e. archipelago
  - f. diversity in diversity
  - g. justice
  - h. equality in law and government
  - i. law order and certainty; and/or
  - j. balance, amicability, and harmony
- (2) In expansion to the standards alluded to in section (1), certain Regulations might contain different standards by the lawful field of the important Regulation

In making laws and regulations, the main foundations that must exist and are contained therein include 5 foundations, namely:

### **Philosophical Foundation**

Regulations generally contain legitimate standards that are romanticized by a general public towards which the elevated goals of social and state life are to be coordinated. Consequently, regulations can be portrayed as an impression of the aggregate standards of society with respect to honorable and philosophical qualities

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that are to be acknowledged in day to day existence through the execution of the pertinent regulations truly. In this manner, the philosophical standards contained in the law ought to mirror the philosophical yearnings of the actual country.

That is, don't let the philosophical goals contained in the law mirror the way of thinking of life of different countries that don't match the philosophical yearnings of the actual country. Subsequently, with regards to state life, Pancasila as a way of thinking should be reflected in the philosophical contemplations contained in each regulation. The laws of the Republic of Indonesia may not put together themselves with respect to the way of thinking of life of different countries and nations. This implies that Pancasila is the philosophical underpinning of the relative multitude of results of the laws of the Republic of Indonesia in light of the 1945 Constitution.

### **Sociological Basis**

The subsequent premise is the humanistic premise, to be specific that each legitimate standard contained in regulation should mirror the requests of the local area's own requirements for lawful standards that are by the truth of the local area's legitimate mindfulness. Thusly, in the preface, observational contemplations should be appropriately planned with the goal that a regularizing thought framed in regulation is genuinely founded on the real factors of everyday routine in the consciousness of individuals' experiences. In this manner, the legitimate standards contained in the law can later be executed as well as could be expected in the midst of the legitimate local area it manages.

### **Political Foundation**

The political premise alluded to here is that the prelude should likewise portray a protected reference framework as per the fundamental beliefs and standards contained in the 1945 Constitution as the primary wellspring of strategy or wellspring of legitimate legislative issues that underlies the development of regulations that set out functional arrangements. However, this policy must originate from the ideas, ideals and political policies contained in the constitution, whether written in the 1945 Constitution or those that live in constitutional conventions and the reality of life as a state from time to time.

### **Juridical Foundation**

The juridical premise in the plan of every regulation should be put in the Prelude "Recollecting". In considering this, it must be prepared in detail and precisely. For example, the provisions of the 1945 Constitution that are used as references, including the mention of certain articles and paragraphs or parts of the 1945 Constitution, must be determined precisely. Other laws that are used as references in forming the law in question must clearly state the number, the title, as well as the number and year of the State Gazette and Supplement to the State Gazette.

### **Administrative Basis**

The five foundations mentioned above must be listed sequentially in the introductory part of the law. The formulation can be divided into three groups or sub-sections, namely (a)

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consideration sub-section or "Considering Considerations", (b) remembrance sub-section or "Considering Considerations" and sometimes also added to (c) attention sub-section or "Consideration Notice ". In the usual practice of forming laws and regulations in Indonesia, the first two sub-sections, namely the considerations sub-section and the considerations sub-section warning sub-section have been regarded as something absolute in the format of the laws and regulations of the Republic of Indonesia for a long ago. While the third sub-section, namely "Considerations Paying Attention" is optional as needed.

The arrangement of regulations and guidelines should likewise focus on the Hypothesis and Targets of Legitimate Legislative issues, in particular the strategies of state heads in the field of regulation that have been active, are in power, and will be active, obtained from the qualities winning in the public eye accomplish the hoped for objectives of the state (Syaukani, 2011). As we know, Indonesia has the ideals of the nation which are contained in the 1945 Constitution, paragraph 4.

Not much different from the goals of legal politics, the goals of the law, in general, are to guarantee legal certainty, legal benefits, and legal justice, as well as to regulate the balance between communities, and the interests of society and realize the ideals of society.

That the DPR/DPRD as people's representative institutions and functioning as legislators should form a law that does not deviate from the purpose of the law, namely to provide certainty to society, justice to society, and benefit to society. In

this case the law is a tool to regulate the balance of society, and the interests of society to realize the ideals of society.

Do not forget also that Indonesia adheres to the Pancasila Democracy system, one of which is the principle of representation. In this case, the DPR/DPRD, which are people's representative institutions and function as legislators, must form laws and regulations to the goals and ideals of the nation and reflect the feeling of justice that lives in society. Laws and regulations may not be stipulated unilaterally or for the benefit of certain authorities, but these laws and regulations are stipulated for the benefit of society and fulfill a sense of justice for all people without exception.

Article Z2 Regulation no. 12 of 2011 concerning the Arrangement of Regulations and Guidelines additionally expresses that Pancasila is the wellspring of all wellsprings of Indonesian state regulation (Munawar et al., 2021). Thus, the arrangement of regulations and guidelines may not struggle with sources from all wellsprings of Indonesian state regulation, specifically Pancasila. Recollecting that Pancasila is the spirit and character of the Indonesian country.

The Preamble to the 1945 Constitution is the philosophy of Indonesian law, while the Body and Explanation of the 1945 Constitution are the legal theory. This is because, in the Body of the 1945 Constitution, a positive legal basis for Indonesia will be found. The theory of law lays the foundations of our positive law philosophy (Darji & Arief, 2006). The link between legal philosophy and the formation of law in Indonesia is that legal

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philosophy plays an important role in the formation and change of law in a better direction. Because Legal Philosophy makes us think more deeply about the concept of law, the purpose of the law, and what is more needed by society.

Consequently the development of regulations and guidelines should go through a course of lawful way of thinking in which it can immediately address the issues of the more extensive local area, in which law is created as a guideline for the behaviour of the public and government officials so that they remain true to the values and norms that exist in society itself.

Talking the role of the DPR/DPRD is of course not only seen from the quantity of the results of the regulations issued, but must also be followed by the quality of the results of the regulations produced, which of course must be by the needs of the rule of law in society. How appropriate the role of the DPR/DPRD must be considered between quality and quantity. According to the author, what is preferred is the quality of a form of regulation compared to the quantity of a form of regulation.

## **CONCLUSIONS**

The objective of public improvement is to understand an equitable and prosperous society similarly physically and profoundly, in which national development is the development of the whole Indonesian human being, and this development, the Central Government has handed over part of its governmental authority to the Regional Governments to regulate and manage household affairs or government in their respective regions within the system of the Unitary State of the Republic

of Indonesia or what is known as the principle of Decentralization. Local government has a dual function of holding executive and legislative powers. Meanwhile, the DPRD acts as a controlling or controlling institution which can approve certain changes or even reject them altogether. However, the DPRD may occasionally submit proposals on its initiative regarding draft regional regulations.

In light of the consequences of the exploration and conversation in regards to the Execution of the Administrative Elements of the Territorial Nation's Regulative Gathering to get great and quality Regulations, quality HR are additionally required. Following are some of the criteria for a DPR/DPRD according to the author after doing some analysis: a. It must be someone competent and considered capable because he has a great responsibility as a representative body, namely all the people. b. Someone who understands the Law better. Knowing the concept of law in depth to produce a law that is appropriate and needed by the community. c. Someone who is fair and upholds the protection of human rights. In this way, a law that is fair and upholds human rights will be created. Laws are made and implemented for the public interest, not for specific interests. d. Someone who behaves honestly. Honest to himself, to other people, and his work. So that it is free from Corruption, Collusion, and Nepotism. e. Must be able to become a good intermediary between the community and the government because of the position as a representative of the people. f. All processes and decisions in

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policymaking must be transparent so that the public knows and can assess and reflect the public interest. g. Must be someone who can maintain the dignity and honor of his position. h. Carry out its duties and authorities based on the applicable Laws and Regulations.

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