

Regional House of Representatives in Indonesia: State Official or Outsourcing Employee in Five Years?

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Abstract: The Regional House of Representatives (DPRD) and the Regional Head and Deputy Regional Head in Indonesia are hold the position as regional government administrators. Both of them are political officials, namely officials who are directly elected by the people (constituents) in general elections. According to the Act provisions, the Regional Head and Deputy Regional Head are hold the position as state officials. While its partners, the leadership and Regional Parliament members, do not have the position of state officials. DPRD leaders and members can be said as a outsourcing employee or employee with a Specific Time Work Agreement (PKWT) for five years, even though it is not in the real sense as stipulated in the Manpower Act. DPRD leaders and members are bound by 'contracts' or 'work agreements' with constituents as 'employers' for five years and can be extended if they regain trust from the 'employer' (constituents) which can be seen from the legislative elections vote.

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I. Introduction

According to Law Number 23 of 2014 concerning Regional Government, the Regional House of Representatives (DPRD) is a regional people's representative institution that hold the position as an element of regional government administration. Regional Government is the operations of government affairs by the regional government and DPRD according to autonomy and assistance task principle with the principle of broadest autonomy in the Unitary State of the Republic of Indonesia's system and principle as referred in the 1945 Constitution of the Republic of Indonesia. Whereas the Regional Government is the regional head as an element of the Regional Government organizer who leads the implementation of government affairs which is the autonomous region authority.

Based on the Act provisions, the Regional Head and the DPRD are hold the position as regional government administrators but they have different functions. The function of the Regional Head is leading the regional government, while the function of the Regional Parliament is forming Regional Regulation, supervising regional government, and preparing a budget. In addition, the Regional Head and Deputy Regional Head are hold the position as state officials. It has caused some DPRD members demand the same position as their partners.

This paper analyzes several issues, namely: Are the leaders and members of DPRD can get the same position as state officials as well as their partners (the Regional Head and Deputy Regional Head)? If it is not, are the leaders and members of the DPRD just outsourcing employees or

employees with a five-year Specific Time Work Agreement (PKWT)?

II. LITERATURE REVIEW

State officials

The statutory provisions use several terms to refer to someone who occupies a certain position in the government and state institutions. These terms include state administrators, public officials, state officials, government officials, and regional officials (Hantoro, 2016). Officials are defined as government employees who hold positions (elements of leadership). In Dutch, the term 'official' is copied to 'ambtdrager', which is defined as a person who is appointed in government service (state, province, township, etc.) (Teeuw, 1999; Hakim, 2011).

Logeman puts 'position' from the aspect of state as an authority organization that has interconnected functions in a totality of certain work environments, so that the state is referred to as an engagement of functions (Logemann, 1975). The state as an office organization that arise authority and position is part of functions or activities of government that are permanent or sustainable (Marbun, 2001). Position appears as a person or legal subject, which is burdened with obligations and made to be authorized to carry out legal actions, though to take action they must go through the 'officials' or 'office holders'. In this case, there must be an absolute separation between the person who holds office as an 'official' and as a person as a private (Logemann, 1975).

From another point of view, there is an opinion that determining a person or entity as an official that binds the administration is not solely determined from the position in the government structure. The measure that must be used is a matter based on the applicable laws, regulations, and what is done in the form of government affairs activities (Indrohartono, 1993). Thus, it can be said that the state administrative bodies or

officials are anything and anyone based on the applicable laws and regulations in the form of government affairs activities without regard to official apparatuses in the hierarchical structure of government or private bodies. In determining a body or position as an administrative body or position, it is irrelevant to find a basis for the problem of its position in the hierarchical structure of government (Fachruddin, 1994).

The state official term is different from government official. Strong (1963) divides government terms into broad and narrow meanings. The government in a broad sense is a whole state organization with all the state apparatus which have as legislative, executive, and judicial functions. While the government in the narrow sense refers to one function, namely the executive function. Referring to Strong's opinion, state officials refer to the government's term in a broad sense which includes officials in the legislative, executive, and judiciary bodies. Whereas government officials refer to the definition of government in the narrow sense which includes the executive branch. Thus, state officials are officials in the legislative, executive, and judiciary, while government officials are officials in the executive body.

According to Manan (2009), there are three state institutions types based on their functions, namely:

1. State institutions which conduct their functions or act for and on behalf of the state, for example presidential institutions, the DPR, and judicial power institutions. These institutions are called state apparatus.
2. State institutions which conduct state administrative functions and do not act for and on behalf of the state. This means that this institution only conduct administrative tasks that are not constitutional in nature. These institutions are called administrative institutions.

3. Supporting state institutions or supporting bodies that support the functions of state instrument. This institution is called an auxiliary organ/agency.

According to Bagir Manan's opinion, a state official is an official at a state institution that conducts its functions or acts for and on behalf of the state, for example the presidential institution, the DPR, and the judicial power institution.

Outsourcing

Outsourcing comes from two words namely out and sourcing. Etymologically, outsourcing means the use of labor sourced from outside the organization. Outsourcing in the manpower field is the use of labor to produce or conduct a job by a company through a labor provider. In management field, outsourcing is delegating operations and daily management of a business process to outsiders/outsourcing service provider companies (Husni, 2003).

There are 3 important elements in outsourcing, namely: (1) Transfer of the supervisory function; (2) Seal of responsibilities or tasks; and (3) Focus on the results or outputs to be achieved (Yasar, 2008). It is needed to be realized that how good the concept of outsourcing is, it is not always successful and still contains a number of risks. In general, the risks of outsourcing can be in the form of (Indrajit&Djokopranoto, 2003):

1. Not achieving the maximum desired goal.
2. Not achieving the part of the desired goal.

The slow achievement of desired goals.

Suwondo (2008)suggested that to be effective, the implementation of outsourcing must be carried out with appropriate steps such as:(1) define outsourcing objectives;(2) identification of functions that must be outsourced; (3) calculate the risk; (4) make a written proposal request; (5) define the scope of the contract; (6) vendor selection on the proposal request list; (7) proposal evaluation; and (8) negotiate the final price.

Outsourcing, although reaping the pros and cons, is widely practiced in Indonesia because it is more profitable for the company than had to recruit its own workforce. Meanwhile,the outsourcing employees consider the outsourcing practices is very detrimental. Law Number 13 of 2003, regarding labor, does not explicitly mention the definition of outsourcing. Arrangement of outsourcing can be seen in Article 64 which states about an employment agreement between the employer and the workforce so the company hand over part of the work to other companies through an employment contract. According to Nedeng (2003), based on Article 1601 b of Civil Code, the meaning of outsourcing is an agreement in which the contractor commits himself to make a certain work for other parties who payfor the work with a certain fee.

The problem of outsourcing eventually arises two models of outsourcing in order to guarantee the rights of workers, namely: 1)By requiring that work agreements between workers and companies that carry out outsourcing work does not take the form of a specific time work agreement (PKWT), but in the form of a non-specified time work agreement (PKWTT); 2) Applying the principle of transferring protective measure for workers who work for companies that carry out outsourcing work (Syamsudin, 2018).PKWT is regulated in Minister of Manpower and Transmigration Decree Number 100/MEN/IV/2004 concerning the PKWT Implementation. According to the Ministerial Decree, PKWT is a work agreement between the worker and the employer to establish a work relationship within a certain time or certain workers. At PKWT, the agreement parties are consist of workers and employers.

The PKWT contents are regulation about individual relations between workers and companies/employers, such as position, salary/wages, benefits, facilities, and other things that are regulating personal work relationships.

Types and nature of work permitted to use PKWT are:

1. Work completed once or temporarily whose the completion is no later than three years
2. Seasonal work

Work related to new products, new activities, or additional products that are still being tested or explored.

III. RESEARCH METHOD

This study conducted using qualitative methods. Qualitative study is a method for exploring and understanding the meaning which -by a number of individuals or groups of people- is ascribed to social or humanitarian problems (Creswell, 2014). Data in this study were obtained from observations, interviews, and literature. Data analysis is performed through data reduction, data display, and verification and conclusion drawing.

IV. DISCUSSION

Becoming DPRD member is a dream of many people because it has high prestige or social status and also earns a very lucrative income and facilities. If the DPRD member occupies a position as chairman (chairman and deputy chairman) or leader of the DPR's Completeness Instruments (AKD), the income and facilities they get are more tempting. However, a few months before the legislative elections, they were overshadowed by the fear of not being re-elected as DPRD member. If not elected again, then the social status or prestige, income and facilities are gone.

Those factors made the DPRD member candidates do various ways to be re-elected as DPRD members. The various methods include violate the law and ethics such as conducting money politics by distributing money to constituents before the legislative elections day. Sometimes the money politics spent by a candidate reach hundreds of

millions Rupiah. The money is usually obtained from a sponsor or bank loan. However, this is not a problem because the loan will 'pay back' in less than five years, so they repay the loan before the tenure ends. The demand for 'return on investment' caused them to abuse their authority by corruption.

For them, the important thing is to be elected as DPRD because the income and facilities are very lucrative. However, the various lucrative income and facilities do not always last long. DPRD member only holds office for one period (five years) because he or she is not reelected in the next legislative election. If they are not elected again, many of the former DPRD members will become poor or their incomes are mediocre because they do not have permanent jobs.

The DPRD member in Indonesia is not a profession based on soul calling or for the people benefit but rather based on 'vocation of status/position' and 'material vocation'. Many DPRD members are prioritizing their own interests than the people interests. Various negative stigma and label were given to DPRD members, for example 4D (Come, Sit, Listen, and Get Money). When they were appointed as DPRD members, the first thing they did was not work for the people but demand additional income and facilities.

They have also demanded to be recognized as state officials. This happened to a number of former members of the Sukabumi District Legislative Council for period 2004-2009 who submitted a judicial review of Law Number 28 of 1999 concerning the Implementation of a State which is Free Corruption, Collusion and Nepotism (Article 2, Number 2 and Number 6) and Law Number 5 of 2014 concerning State Civil Apparatus (Article 122, letter I and letter M). The trial court with registration Number 4/PUU-XIV/2016 held on Tuesday, February 23, 2016 with the Panel of Judges led by Deputy Chief Justice, Anwar Usman. Kuswara (the Petitioner)

assessed "There was discrimination in the provisions of Article 2 number 4 and its explanation and Article 2 number 6 and the explanation of Law Number 28 of 1999. The provision only recognizes governors, deputy governors, regents, and mayors as state officials. While the deputy regent, deputy mayor, the provincial DPRD members, and the petitioners as Regency DPRD members for the period 2004-2009 were not recognized as state officials" (Satriantoro, 2016).

According to the Petitioner, the Regency/City DPRD is also an element of regional government administration. The non-recognition of the Petitioner as a state official raises legal uncertainty and reflects discrimination in law. "As one concrete example is the governor, deputy governor, regent, deputy regent, mayor, deputy mayor get the 13th monthly allowance while in his tenure and after his tenure getting a pension fund from the state," he explained. Responding to the Petitioner, the Constitutional Justice, Maria Farida Indrati, alluded to the definition of regional head and DPRD as state officials. "The DPRD and regional heads are include the regional government organizers. So, if it said as a state official is not right, " explained Maria. The regent and mayor, refers to Regional Governments Law, having rights to represent regions. For example, to act on behalf of the regions inside and outside the court. While the DPRD cannot do that. "State officials basically refer to trias politica, i.e. they come from institutions that have function as the legislative, executive, or judiciary. The DPRD is not categorized in those three, so that DPRD members cannot be categorized as state officials, "explained Maria (Satriantoro, 2016).

The Constitutional Justice Aswanto stated that the petition submitted by the Petitioner did not contain strong constitutional norms. The focus of the petition, according to Aswanto, is limited to material matters, namely detailing the allowance for a state official if he is retired. "In fact, I did not

find any conflicting constitutional norms. It is talking about implementing an Act, "he explained. Aswanto suggested that if the application still wants to be continued, it must be corrected. The corrections include building and elaborating conceptual framework. For example, making comparisons with other countries related to the allowances of former state officials (Satriantoro, 2016).

The decision of the Constitutional Court affirmed that DPRD members are not state officials as well as DPR members. According to C.F Strong (1963), state officials are officials in the legislative, executive, and judiciary. In this context, the DPR is a legislative institution because DPR makes laws (the legislative function). So it can be said that DPR members are state officials. While the DPRD, based on Law Number 22 of 1999 concerning Regional Government, is a Regional Legislative Body. Then, Law Number 22 of 1999 revitalized by Law Number 32 of 2004 and Law Number 23 of 2014 which is stated the DPRD is not a Regional Legislative Body. The legislative function of the DPRD was also revised into forming a Regional Regulation (Perda). Although according to Law Number 12 of 2011 concerning the Regulations Formation, the local regulation is one type of statutory regulation, but the Regional Regulations are not a Law. Therefore, the DPRD is not a legislative body (legislator), so DPRD members are not state officials.

In addition, according to Article 122 of Law Number 5 of 2014 concerning State Civil Apparatuses, DPRD members are not included as state officials. State officials according to Law Number 5 of 2014 are:

1. President and Vice President.
2. Chairman, deputy chairman, and members of the People's Consultative Assembly.
3. Chairman, deputy chairman, and members of the House of Representative.

4. Chairman, deputy chairman, and members of the Regional House of Representative.
5. Chairman, deputy chairman, young chairman, and supreme judge of the Supreme Court as well as chairman, deputy chairman, and judges in all judicial bodies except ad hoc judges.
6. Chairman, deputy chairman, and members of the Constitutional Court.
7. Chairman, deputy chairman, and members of the Supreme Audit Board.
8. Chairman, deputy chairman, and members of the Judicial Commission.
9. Chairman, deputy chairman of the Corruption Eradication Commission.
10. Ministers and positions which same level as ministerial.
11. Representative Heads of the Republic of Indonesia abroad who are hold the position as Extraordinary and Plenipotentiary Ambassadors.
12. Governor and Deputy Governor.
13. The Regent/Mayor and Deputy Regent/Deputy Mayor.
14. Other state officials determined by law.

Based on the description above, only the governor, deputy governor, regent/mayor and deputy regent/deputy mayor include state officials in the regional government environment. While the leader and members of DPRD are not included as state officials, although according to Law Number 23 of 2014 concerning Regional Government they are elements of regional government organizers. Therefore, the demands of some DPRD members to be recognized as state officials are contrary to the Law. The claim cannot be granted as long as the Law does not determine that. Behind this demand, the motivation is ultimately money.

The question is if the leaders and members of the DPRD are not state officials, then are they a five-yearly outsourcing employees with Specific Time Work Agreement (PKWT)?

This question is anecdotal and ironic in nature because the leaders and members of the DPRD are not outsourced employees or employees with PKWT in the real sense as regulated in Law Number 13 of 2003 concerning Labor. The author uses these two terms because the empirical practice shows the tenure of the leader and members of the DPRD is five years. They seem to be bound by 'contracts' or 'work agreements' with their constituents as 'employers' for five years. The 'contract' or 'work agreement' can be extended or not depending on the votes they get in legislative elections.

The 'contract' or 'work agreement' is made between DPRD candidates and 'employer' which is the constituent who chooses them. The 'contract' or work agreement' is made in writing as seen from the vote results and verbally through promises during the campaign. If elected candidates as DPRD members show good performance (fighting for the aspirations of the people, especially constituents), then the constituents will elect them again in the next legislative elections. The 'contract' and 'work agreement' with the constituents were extended. Conversely, if during their tenure they did not perform well, the 'employer' (constituents) would not elect them back in the next legislative elections. The 'contract' and 'work agreement' with the constituents will no longer be extended.

When the 'contract' and 'work agreement' with the 'employer' (constituents) are extended, then DPRD members continue to receive salaries, benefits and various lucrative facilities. Moreover, if they occupy leader positions in the DPRD, the benefits and facilities received are even more tempting. They also get a lot of fees from 'playing' projects in the local government environment. This has become the dream of many people in the middle of limited job opportunities. These lucrative allowances and facilities encourage incumbent DPRD members to do various ways to get them reelected, including by conducting money politics

to 'employers' (constituents) or conducting collusion with the leaders of the Regional Election Commission (KPUD) to mark up the vote results. They sometimes have to borrow hundreds of millions Rupiah from the bank to pay. However, that is not a problem because before five years they will get return.

Conversely, when the 'contract' and 'work agreement' with the 'employer' (constituents) are not renewed, then all salaries, benefits, and lucrative facilities as DPRD members are lost. Some of them returned to poverty because they did not have permanent jobs. Some are even stressed and then become psychiatric patients or even mental hospitals residents. It is very sad. Then, they ready to compete again in the next legislative elections by gathering a large amount of capital. Some of them were reelected but many of them are not reelected.

V. CONCLUSION

Based on the description above, it can be concluded that:

1. Based on Law Number 28 of 1999 concerning State Administration which is Free of Corruption, Collusion and Nepotism and Law Number 5 of 2014 concerning State Civil Apparatus, leaders and members of DPRD are not included as state officials. Therefore, the demands of some DPRD members to be recognized as state officials are contrary to the Law. The claim cannot be granted as long as the Law does not determine that.
2. The DPRD leaders and members are not outsourced employees or employees with a Specific Time Work Agreement (PKWT) for five years in the real sense as regulated in Law Number 13 Year 2003 concerning Labor. DPRD leaders and members appear to be bound by 'contracts' or 'work agreements' with their constituents as 'employers' for five years. The 'contract' or

'work agreement' can be extended or not depends on the trust of the 'employer' (constituents) as seen from the vote in the legislative elections

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