

The Authority of the Governor Regarding Termination of Members of the Regional People's Legislative Assembly in the Perspective of State Administration in Indonesia

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Accepted: 29-05-2023 Revised: 08-06-2023. Approved: 22-06-2023 Published: 03-07-2023

DOI: 10.30596/dll.v8i2.15028

How to cite:

Kodiyat B, A, MS., & Hadita, C., (2023). "The Authority of the Governor Regarding Termination of Members of the Regional People's Legislative Assembly in the Perspective of State Administration in Indonesia", De Lega Lata: Jurnal Ilmu Hukum 8 (2): p. 229-236

ABSTRACT

Problems with the interim dismissal of members of the regional people's representative council who are related to the authority of the governor. The research method used is normative juridical with library research. The results of the study show that within 7 (seven) days of receiving the proposal to dismiss a member of the Regency/Municipal DPRD, it is obligatory to submit the proposal to the Governor. If within 7 (seven) days the regent does not submit a proposal to dismiss a member of the Regency/Municipal DPRD, the leadership of the Regency/Municipal DPRD will immediately submit the proposal to the Governor and within 14 (fourteen) days, the Governor must formalize the dismissal of the member of the Regency/Municipal DPRD.

Keywords: Dismissal, Inter, Time, Board, Governor.

INTRODUCTION

Political stability in the context of economic development has its own implications for the life of parties and the role of people's representative institutions. Since the beginning, the government has had an obsession with stopping political riots. For this reason, one of the ways that can be found is to regulate the party system in such a way, so that the existing parties do not engage in disputes that can disturb the calm of the government in implementing development. (Mahfud, 2011)

The regulation on political parties is one of the efforts to constitutionalize political democracy (the constitutionalization of democracy politics) and is a relatively new object of study in constitutional law. Persily and Cain put forward several paradigms that influence how political party arrangements are carried out. The paradigms are managerial, liberal, progressive, political market, and pluralist (Rachman, 2016).

Abuse of Power is an act committed by a public official or ruler with a specific interest agenda, both for individual interests and for the interests of groups or corporations. (Yogia, 2017)

Interim Compensation Right (PAW) is defined by a number of experts, one of which is Mh. Isnaini said, Interim Replacement Right (PAW) in general is a 'Sword of Democles' for each DPR and DPRD member. With the recall right, members of the DPR and DPRD will wait more for instructions and guidelines from their faction leaders rather than auto-activities. Carrying out high-level auto-activities without the approval of the faction leaders is likely to make a fatal mistake that could result in recalling. Because of that, for the security of its membership, it is better to wait for what is instructed by the leader of the faction (Farida, 2013).

The authority of the Governor in the process of dismissing members of the regional people's representative council in terms of responding to proposals from the regent/mayor raises problems if the regent/mayor does not forward the proposal for the interim dismissal of members of the regional people's representative council and/or the Governor does not respond to the proposal from the regent/mayor so that it is necessary examined the problems of the governor's authority regarding the interim dismissal of members of the regional people's representative council.

RESEARCH METHOD

The research method used is normative juridical. The data collection tool used is library research. (Eka NAM Sihombing, Cynthia Hadita, 2022). In this study, it will examine the interim dismissal of members of the regional people's representative council relating to the authority of the Governor.

DISCUSS AND ANALYSIS

Dismissal of the Regional People's Legislative Assembly in Positive Law in Indonesia

Political parties will grow and develop along with the increasing level of public awareness in politics so that the presence of a political party is expected to be able to accommodate their interests. Political parties have a broad meaning. To know deeply about the meaning and how political parties work (Ilham, 2015).

Council members have an interest in ensuring that all government policies, especially those affecting the livelihoods of many people and other strategic policies, are not decided unilaterally, but must prioritize consultation with representative institutions. In carrying out their roles and functions, both DPR and DPRD members must try to be open to various suggestions, criticisms, and public opinion in order to improve their performance as political representative institutions, bearers of the people's mandate. As is well known, the progress of the DPR and DPRD in carrying out their duties and functions today cannot be separated from the public's attention. With the development of a climate of openness, the public has the widest possible opportunity to participate in and monitor the implementation of the DPR's duties as well as provide an assessment of the performance of its representatives (Gunawan, 2008).

The emphasis is on rights, and not on power. Viewed from the point of view of society, power without authority is illegitimate power. Power must gain recognition and approval from society in order to become authority. Authority only changes in form. According to the fact that

authority was still there. The development of an authority lies in the direction and purpose of fulfilling as much as possible the form desired by society (Soekanto, 2009).

From this description it can be seen that political parties with power cannot be separated. Precisely political parties are held there is nothing but to achieve power both in the executive and in the legislature. That power essentially comes from the people, and the means of the people to realize their power is through political parties (Thoha, 2014).

Various regulations related to MD3 (MPR, DPR, Provincial DPRD, Regency DPRD, City DPRD) have relevance to several laws and regulations as follows:

- a. PERPU No. 1 Tahun 2020 tentang Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan untuk Penanganan Pandemi Corona Virus Disease 2019 (COVID-19) dan/atau dalam Rangka Menghadapi Ancaman yang Membahayakan Perekonomian Nasional dan/atau Stabilitas Sistem Keuangan
- b. UU No. 13 Tahun 2019 tentang Perubahan Ketiga atas Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah
- c. UU No. 2 Tahun 2018 tentang Perubahan Kedua atas Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah
- d. UU No. 42 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 17 Tahun 2014 Tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah
- e. UU No. 23 Tahun 2014 tentang Pemerintahan Daerah

Regulations related to the MD3 Law, there are 2 (two) Constitutional Court decisions that grant a judicial review regarding their authority, the first is through Decision Number 76/PUU-XIII/2014 a. The phrase "written approval from the Honorary Council of the Council" in Article 224 paragraph (5) and Article 245 paragraph (1) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council is contradictory to The 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as "written approval from the President." b. Article 245 paragraph (1) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Legislative Council, the Regional Representatives Council, and the Regional People's Legislative Assembly reads in full as "Summons and requests for information for investigations of members of the DPR who are suspected of committing a crime must receive written approval from the President.

Furthermore, through Decision Number 79/PUU-XIII/2014 a. Article 71 letter c Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council are contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force as long as they are not interpreted as "discussing draft laws" submitted by the President, DPR, or DPD relating to regional autonomy, central and regional relations, formation and expansion as well as merging of regions, management of natural resources and other economic resources, as well as central and regional financial balances, by involving the DPD prior to obtaining approval jointly between the DPR and the President." b.

Article 166 paragraph (2) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council are contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force as long as they are not interpreted as "Draft laws" the law as referred to in paragraph (1) along with academic papers is submitted in writing by the leadership of the DPD to the leadership of the DPR and the President." c. Article 250 paragraph (1) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council are contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force as long as they are not interpreted, "In implementing the powers and duties referred to in Article 249, the DPD has independence in preparing the budget which is poured into programs and activities submitted to the President to be discussed with the zDPR in accordance with statutory provisions." d. Article 277 paragraph (1) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council are contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force as long as they are not interpreted as "draft laws" law as referred to in Article 276 paragraph (3) along with academic papers submitted with a letter of introduction from the leadership of the DPD to the leadership of the DPR and the President."

The Authority of the Governor on Interim Dismissal of the Regional People's Legislative Assembly

The Regional People's Representative Council is a regional people's representative institution, an element of regional government administration. DPRD as a regional legislative body has an equal position and is a partner of the local government. There is practically no other way apart from political parties for anyone who wants to run for office as a member of the DPR and DPRD. This means that it is not possible to register candidates for members of the DPR and DPRD from individual candidates. The candidate must use the political party mechanism to ensure his candidacy and comply with the rules of the statutes and bylaws that have been outlined by political parties for the candidacy of members of the DPR and DPRD (Gunawan, 2008).

The study of the perspective of political sociology, political parties are a collection of a group of people and society who try to gain or maintain the power of a government or country. As for political science, the term political party can be referred to as an organized group whose members have the same orientation, values, and ideals. In general, the goal in the form of political parties is to gain political power and seize political positions, usually by constitutional means to carry out policies. The function of political parties from the political recruitment dimension leads political parties to prepare presidential candidates from their parties. It is stated here that political recruitment is the selection and appointment of a person to carry out a number of roles and the political system in general and government in particular (Said, 2011).

Arbi Sanit explains representation in the sense that a person or group of people has the authority to express an attitude or carry out an action either intended for, or on behalf of another party. Furthermore, he also argues, political representatives are individuals or groups of people who are believed to have the ability and obligation to act and speak on behalf of a larger group

of people. Thus the indicators that can be used to see whether a representative is considered representative by the person representing him are divided into 3 (three) things, namely: a. Has the same characteristics as the constituents (voters). b. Has the same emotional expression as the constituent emotions. c. High intensity of communication with constituents. The constellation of state policies, political parties as practical political entities while the legislature as an extension of political parties. It means that political parties are the identity of political implementation as a forum that functions to accommodate the aspirations of the people and the legislature and the legislature as an extension of political parties. It means that the cadres of political parties who sit in parliamentary/legislative seats must be able to interpret the aspirations of the people and voice the wishes of the people by defending the interests of the wider community (Efriza, 2014).

The Governor's authority in dismissing members of the Regional People's Representative Council is regulated in Law of the Republic of Indonesia Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council Article 356 paragraph:

- (1) The dismissal of members of the provincial DPRD as referred to in Article 355 paragraph (1) letters a and b and in paragraph (2) letters c, e, h, and i is proposed by the leadership of the political party to the leadership of the provincial DPRD with a copy to the Minister of Home Affairs.
- (2) Not later than 7 (seven) days after receiving the proposal for dismissal as referred to in paragraph (1), the leadership of the provincial DPRD submits the proposal for dismissal of provincial DPRD members to the Minister of Home Affairs through the governor to obtain the official dismissal.
- (3) Not later than 7 (seven) days after receiving the proposal for dismissal as referred to in paragraph (2), the governor submits the proposal to the Minister of Home Affairs.
- (4) The Minister of Home Affairs formalizes the dismissal as referred to in paragraph (2) no later than 14 (fourteen) days after receiving the proposal for dismissal of a member of the Provincial DPRD from the governor..

The inauguration of the dismissal of the DPRD through the governor's authority is regulated in the Law of the Republic of Indonesia Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council Article 357 paragraph:

- (1) The dismissal of members of the provincial DPRD as referred to in Article 355 paragraph (2) letters a, b, d, f, and g, is carried out after the results of an investigation and verification are contained in a decision of the honorary body of the provincial DPRD on complaints from provincial DPRD leadership, community, and/or voters.
- (2) The decision of the honorary body of the provincial DPRD regarding the dismissal of a member of the provincial DPRD as referred to in paragraph (1) is reported by the honorary body of the provincial DPRD to the plenary session.
- (3) Not later than 7 (seven) days after the decision of the honorary body of the Provincial DPRD which has been reported in the plenary session as referred to in paragraph (2), the leadership of the provincial DPRD conveys the decision of the honorary body of the provincial DPRD to the leadership of the political party concerned.

- (4) The leadership of the political party concerned submits a decision regarding the dismissal of its members to the leadership of the provincial DPRD, no later than 30 (thirty) days after receiving the decision of the Honorary Board of the provincial DPRD as referred to in paragraph (2) from the leadership of the provincial DPRD.
- (5) In the event that the leadership of the political party as referred to in paragraph (3) does not issue a decision on the dismissal as referred to in paragraph (4), the leadership of the provincial DPRD shall no later than 7 (seven) days forward the decision of the Honorary Board of the provincial DPRD as referred to in paragraph (2) to the Minister of Home Affairs through the governor to obtain the official dismissal.
- (6) Not later than 7 (seven) days after receiving the decision on the dismissal as meant in paragraph (5), the governor will convey the decision to the Minister of Home Affairs.
- (7) The Minister of Home Affairs formalizes the dismissal as referred to in paragraph (5) no later than 14 (fourteen) days after receiving the decision of the Honorary Board of the Provincial DPRD or the decision of the leadership of a political party regarding the dismissal of its members from governor.

Specifically regarding the reasons and mechanisms for the interim termination of the DPRD and the authority of the governor, it is regulated in the Law of the Republic of Indonesia Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council, Article 405 paragraph:

- (1) Members of the Regency/Municipal DPRD stop from time to time because:
 - a. die;
 - b. resign; or
 - c. dismissed.
- (2) Regency/city DPRD members are dismissed from time to time as referred to in paragraph (1) letter c, if:
 - a. unable to carry out their duties on an ongoing basis or permanently absent as a member of the Regency/Municipal DPRD for 3 (three) consecutive months without any explanation;
 - b. violating the oath/pledge of office and code of ethics of the Regency/Municipal DPRD;
 - c. declared guilty based on a court decision that has permanent legal force for committing a criminal offense punishable by imprisonment for a minimum of 5 (five) years;
 - d. does not attend the plenary meeting and/or meeting of the apparatus of the regency/city DPRD which is his duty and obligation for 6 (six) consecutive times without a valid reason;
 - e. proposed by the political party in accordance with the provisions of the legislation;

- f. no longer fulfills the requirements as a candidate for member of the Regency/Municipal DPRD in accordance with the provisions of the laws and regulations concerning general elections;
- g. violates the provisions of the prohibition as regulated in this Law;
- h. dismissed as a member of a political party in accordance with the provisions of laws and regulations; or
- i. be a member of another political party.

The governor formalizes the dismissal within a period of 14 (fourteen) days as stipulated in the Law of the Republic of Indonesia Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council Article 406 paragraph:

- (1) Dismissal of members of the Regency/Municipal DPRD as referred to in Article 405 paragraph (1) letters a and b and in paragraph (2) letters c, letter e, letter h, and letter i is proposed by the leadership of the political party to the leadership of the regency DPRD /city with a copy to the governor.
- (2) At the latest 7 (seven) days after receiving the proposal for dismissal as referred to in paragraph (1), the leadership of the regency/city DPRD submits the proposal for dismissal of the members of the regency/city DPRD to the governor through the regent/mayor to obtain the official dismissal.
- (3) Not later than 7 (seven) days after receiving the proposal for dismissal as referred to in paragraph (2), the bupati/mayor shall submit the said proposal to the governor.
- (4) The governor formalizes the dismissal as referred to in paragraph (2) no later than 14 (fourteen) days after receiving the recommendation for dismissal of the regency/city DPRD member from the regent/mayor..

The problem that arises is if the Regent/Mayor does not forward the proposal to the Governor and/or the Governor does not formalize the dismissal of members of the regional people's representative council, so that the decisions of political parties have the potential to be ignored.

CLOSURE

Conclusion

The governor's authority in dismissing members of the regional people's representative council at the suggestion of the regent/mayor has problems if the regent/mayor does not forward the proposal to the governor and/or the governor does not formalize the dismissal of members of the regional people's representative council, so that the decisions of political parties have the potential to be ignored.

Suggestion

The urgency of strengthening the Governor's authority in dismissing members of the regional people's representative council, so that existing legal certainty does not open up a legal vacuum if the Regent/Mayor does not forward the proposal to dismiss members of the regional people's representative council to the Governor.

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