
*THE POSITION OF THE DPRD VIEWED FROM THE PERSPECTIVE
LEGAL POWER AND POSITION OF THE STATE*

Robertus B. Oe Haki,

Sekolah Tinggi Ilmu Hukum Prof. Dr. Yohanes Ufunan, SH.,MH, *email:* roberushaki@gmail.com

Abstract

This article aims to find out the concept of the position of the DPR in the perspective of the law of state power and position. Specifically, that law has an important meaning for power because law can act as a means of legalizing the formal power of state institutions, especially the position of the DPR through establishing a legal basis (rules of law) and playing a role in controlling power so that its implementation can be accounted for logically and ethically. The research method used in this paper is normative legal research using a conceptual approach. The results of the study show that the position of the DPRD as a state position is the essence of the limitation of state power by law, in this case the provisions of the laws and regulations governing it as a manifestation of the nature of Indonesia as a state based on law (rechts staat) not based on power (machts staat) as the mandate of the 1945 Constitution which is the legal basis and measure of the performance of state power and positions in all state power institutions, namely the legislature, executive and judiciary. Legal restrictions on the authority of the DPRD office through Law Number 17 of 2014 concerning the MPR, DPR, DPD, DPRD are normatively sufficient, but the limitation on the term of office of the DPRD is still considered not to reflect the principle of equality with provisions regarding other elected political terms. through the mechanism of direct election by the people..

Keywords *Position of the DPR, Power Law and Position of the State.*

Abstrak

Artikel ini bertujuan untuk mengetahui konsep jabatan DPR dalam prespektif hukum kekuasaan dan jabatan negara. Secara spesifik bahwa hukum mempunyai arti penting bagi kekuasaan karena hukum dapat berperan sebagai sarana legalisasi bagi kekuasaan formal lembaga-lembaga negara terkhusus jabatan DPR melalui penetapan landasan hukum (aturan-aturan hukum) dan berperan mengontrol kekuasaan sehingga pelaksanaan dapat dipertanggungjawabkan secara logis dan etis. Metode penelitian yang digunakan dalam penulisan ini adalah penelitian hukum normative yang menggunakan pendekatan konseptual approach. Hasil penelitian menunjukkan bahwa jabatan DPRD sebagai jabatan negara merupakan hakikat dari pembatasan kekuasaan negara oleh hukum, dalam hal ini ketentuan peraturan perundang-undangan yang mengatur tentangnya sebagai wujud dari hakikat Indonesia sebagai negara berdasarkan hukum (rechts staat) bukan berdasarkan kekuasaan (machts staat) sebagaimana amanah UUD 1945 yang menjadi dasar hukum dan ukuran kinerja kekuasaan dan jabatan negara di semua lembaga kekuasaan negara yakni legislatif, eksekutif, dan yudikatif. Pembatasan hukum atas kewenangan jabatan DPRD melalui Undang-Undang Nomor 17 Tahun 2014 tentang MPR, DPR, DPD, DPRD secara normatif telah memadai, namun pembatasan masa jabatan DPRD masih dinilai belum mencerminkan prinsip equality (kesetaraan) dengan ketentuan mengenai masa jabatan politik lainnya yang dipilih melalui mekanisme pemilihan umum secara langsung oleh rakyat.

Kata Kunci: Jabatan DPR, Hukum Kekuasaan dan Jabatan Negara.

PRELIMINARY

Talking about State Positions is always associated with State power as a communal entity of a nation, including Indonesia. State power must be understood in relation to law, moreover according to the mandate of the 1945 Constitution in the elucidation before the amendment it was said that "the Indonesian state is based on law (*rechts staat*) and not based on power (*machts staat*)". Thus our understanding of the position of the state must be built from our understanding of power in the context of Indonesia as a rule of law state. In the context of this understanding, the position of DPRD as a political position should be interpreted in relation to our understanding of state power, which is limited by law both from the aspect of term of office and the aspect of the substance of the authority it has so that it is not abused.

RESEARCH METHODE

This empirical research uses a statutory approach (*statute approach*) and a case approach (*case approach*). As for this study, researchers used the live case study approach as an approach to a legal event whose process is still ongoing. Thus, the authors make observations or research directly into the field in order to obtain accurate truth in the process of perfecting this writing.

The data collection technique that researchers used in this study was through library research and field studies, namely conducting interviews. The data collection study was classified into two parts, namely primary data and secondary data, primary data obtained through field studies and secondary data sourced from library research.

The results of the field study inventory were analyzed to obtain conclusions and then analyzed using integrative and conceptual analysis methods which tend to be directed at finding, identifying, processing and analyzing legal materials to understand their meaning, significance and relevance. From the data obtained, it will be arranged systematically after being selected based on the problem and seen for its suitability with the applicable provisions then discussed theoretically combined with the reality in the field to produce conclusions

DISCUSSION

1. LEGAL POWER AND POSITION OF THE STATE

a. Power Relations with Law: Basic Understanding of the Rule of Law

Law, state and power¹ are three things that cannot be separated. Talking about the state, we are talking about the organization of power, so that law is very closely related to power. The relationship between law and the state can be seen from the view of Friedrich Von Savigny who argues that law grows together with the growth of the nation (people), becomes strong together with the strength of the nation and finally dies. The same thing was said by Theodor Geiger who was of the view that the only applicable law was the law originating from the state. In this regard, Krabbe argues that the people obey state regulations not because of coercion (by state power), but because they have legal awareness, so that the people are the source of state power. For him, the state is not the holder of supreme sovereignty because the state must also be subject to the law. Thus the state as a political organization is the personification of the legal order to run the government to achieve the goals of the state through the state organs as the driving force, which can only be carried out with the existence of state power, which contains the rights and obligations of the state given by law. The relationship between law, power and the state is properly described by Mochtar Kusumaatmadja, law without power is wishful thinking, and power without law is despotism.

The relationship between power and law must be understood in the context of Indonesia as a rule of law state. Therefore, the meaning of power understood here is not power in the general sense, namely the ability of a person or a group to influence the behavior of another person or group, so that those parties act according to what they want. The power in question is state power, power that is subject to the legal order.

¹ Fakhriyasa Zalili Sailan, 'Hubungan Hukum, Negara, Dan Kekuasaan', *Zalilifakhriyasa.Blogspot.Com*.

Power in relation to state affairs can be divided into two groups, namely state power and community power. State power relates to state authority to regulate people's lives in an orderly and peaceful manner. Community power is the power/ability of the community to manage and organize the interests of the individuals and community groups that are its members so that social interaction can run smoothly. Power in the context of law relates to state power, namely the power to regulate and organize social and state life which includes the legislative, executive and judicial fields. Thus, power is a means to carry out the main functions of the state in order to achieve state goals.

The concept of a rule of law state is known in terms of The Rule of Law and Rechtsstaat. This conception is always associated with the concept of legal protection, because this concept cannot be separated from the idea of providing recognition and protection of human rights. However, these two concepts actually have a different state and institutional background, even though in essence they both want protection for human rights through the institutionalization of an independent and impartial judiciary. The term Rechtsstaat is widely adopted in Continental European countries which are based on the civil law system, while the rule of law has been developed in countries with the Anglo-Saxon tradition which is based on the common law system.

The term Rechtsstaat came from Robert von Mohl and was a creation of the bourgeoisie, whose economic life was on the rise at that time, even though its political life as a class was on the decline. At the beginning of its emergence, the concept of a rule of law state was called the concept of a formal rule of law state which contained an individualist philosophy because it was intended to fight for the rights of individual citizens. However, in subsequent developments, such as in a material or social rule of law state, the philosophical content of the rule of law concept has changed to become socialist. This is in accordance with the objectives to be achieved by the conception of a material rule of law state or a social law state, namely the welfare of a nation so that it is also called a welfare state. The principle of a material rule of law state is not only the protection of human rights, the separation of powers, the principle of legality and the necessary state administrative justice. In the context of a material rule of law state, there is a duty on the shoulders of the government (state), namely to realize the general welfare of the people.

Burkens stated that as a country based on law means as a country that places law as the basis of state power and the implementation of this power in all its forms is carried out under the rule of law. That is, the state as an organization of power is essentially the product of a legal action carried out by the founding fathers of the state. If it stands solely because of legal actions, it means that the state as a result of legal actions is nothing but a corporation (legal entity). If the state is seen as a corporation, it means that the legitimacy of state power and the ruler's power must be based on law and not on power alone. In other words, the power of the ruler as bearer of power originates from law so that this power must be subject to law. Rulers as power developers have the authority to govern or control other people, not solely because of their power, but because of the legal rules that form the legal basis of their power. The recognition that law is a source of state power has consequences for the position of the ruler, the power held by the ruler, the protection of the rights of the people or citizens, and the relationship between the ruler and the people law.

. Thus, if there is an acknowledgment that the authority of the ruler originates from law, it means that the power of the ruler is not absolute or unlimited power, but power that is limited by law. The consequence of such recognition means that the authorities cannot act arbitrarily. On the other hand, the limitation of the ruler's power by law is positive for the rights of the people or citizens because if the ruler's power is limited by law, the ruler by himself cannot act arbitrarily so that the recognition and protection of people's rights can be realized. In a rule of

law, the relationship between the ruler and the people is not based on the basis of power, but rather a relationship that is equal in nature or is regulated by or based on law².

There are two important things from Burkens' statement which states that the implementation of state power in all its forms is carried out under the rule of law, namely as follows:

- 1) If power in all its forms is exercised based on legal provisions, it means that every action of the ruler must be based on legal provisions that existed before the action of the ruler was carried out. This principle is referred to as the principle of legality. This principle of legality provides a justification for every government action because if there is no legal basis, the authorities cannot act. The principle of legality is intended to provide legal certainty so that authorities cannot act arbitrarily in exercising state power.
- 2) If power in all its forms is exercised based on legal provisions, this means that apart from being the basis for the actions of the authorities (the legality of the actions of the authorities) it is also at the same time a guideline or prosecutor that provides guidance on the ways in which state power is exercised. Thus, the power possessed by the ruler cannot be exercised in ways that are not guided by the rule of law. The law regulates the procedures or procedures that must be carried out in the administration of state power.

Legality and procedures or procedures for administering state power are important matters. However, this should not become an obstacle that prevents the authorities from carrying out their powers, duties and authorities properly. Therefore, as stated by Sudargo Gautama, "the main issue regarding the rule of law is the way in which state power can be controlled without overly obstructing its efforts to carry out state goals".

The limitation of power by law as stated above is an acknowledgment that power is subordinated to law and not vice versa, so that law must be superior to power. The compliance of the rulers with the law implies that the law is in a higher position than the power or will and interests of the authorities. However, the limitation of power does not only apply to rulers. The rule of law also requires restrictions on the power of actions that can be carried out by fellow citizens so that there is no act of judging oneself because the act of judging oneself is basically an arbitrary act that is no less dangerous than the arbitrary actions of the authorities.

A rule of law requires restrictions on the powers of rulers and the actions of citizens so that both rulers and citizens must obey the law. Wirjono Prodjodikoro stated the following in a rule of law state:

- 1) All instruments from the state, especially instruments from the government in their actions towards citizens or in their mutual relations with each other, may not be arbitrary, but must pay attention to the applicable legal regulations.
- 2) All people in social relations must comply with the applicable legal regulations.

If the rulers and the people are subject to the law, it means that the law is obeyed and acknowledged that it applies to the rulers and the people. Compliance with the law on its own accord shows the authority of law in a country. The authority of the law is nothing other than the recognition of the superiority of the law so that the law is above all or there is the supremacy of law in the country. The law applies to anyone regardless of position, class, religion, or skin color. The superiority of law over absolute power is necessary because Sjachran Basah argued "*power without law is tyranny*".

Laws that can be used as the basis for state power and guidelines in the exercise of state power in a rule of law are laws that reflect justice because as stated by Franz Magnis Suseno,

² Hotma P. Sibuea, *Asas Negara Hukum, Peraturan Kebijakan, & Asas-Asas Umum Pemerintahan Yang Baik* (Jakarta: Erlangga, 2010).

the notion of a rule of law is based on the belief that state power must be exercised on the basis of good and just laws. Good and just law is not merely a law whose formation process has fulfilled formal requirements, but must be able to be tested against the testing norms, namely legal ideals or legal ideas.

b. State Power: Implementation of the "Trias Politica" Doctrine in Indonesia

The doctrine of "Trias Politica" is the doctrine of the division of functions of state power developed by Baron de Montesquieu (1689-1785) from the thoughts of previous philosophers, which at this time almost all modern countries use it adapted to the needs of the administration of the functions of the respective state powers, which generally distinguishes the function of state power into three functions of power namely the legislative function; executive functions; and judicial functions.

The concept of dividing the functions of power had developed long before Montesquieu coined the "Trias Politica" doctrine, namely:

- 1) In France in the XVI century, the function of state power was divided into five functions, namely (1) diplomacie function; (2) defense function; (3) finance function; (4) justice function; and (5) policy function.
- 2) John Locke: the function of state power is distinguished by (1) legislative function; (2) executive functions; (3) federative function. For John Locke, the function of the judiciary is included in the executive function or government function.
- 3) Montesquieu: perfecting the conception of the function of state power that was coined by John Locke by dividing it into (1) legislative functions; (2) executive functions; and (3) judicial function. In contrast to John Locke, removing the judicial function included in the executive function according to John Locke into a separate function of state power while the federative function which John Locke placed separately as one of the functions of state power by Montesquieu was included in the executive function.
- 4) C. Van Vollenhoven: developing the concept of the functions of state power in the Netherlands with its own concept, namely the functions of state power include: (1) the function of regeling (regulation); (2) bestuur function (organization of government); (3) rechtspraak (judicial) function; (4) political function (function of order and security). In Indonesia, C. Van Vollenhoven's conception is known as Catur Praja.
- 5) Goodnow: differentiates the function of state power in two functions (a concept in praja in Indonesia), namely (1) Policy making function (policy making function); and (2) Policy executing function (policy implementation function).

The core of the Montesquieu doctrine is the concept of separation of powers over the three functions of power, namely the legislative function, the executive function and the judicial function where the three functions of power must be institutionalized in each of the three organs of the state. An organ may only carry out one function and may not interfere in each other's affairs in an absolute sense. Otherwise, freedom will be threatened. Such a conception is no longer relevant today because it is no longer possible to maintain that the three power organizations only deal exclusively with one of the three functions of state power. In relation to the principle of checks and balances, the relationship between branches of power must touch each other and the three are equal and control each other.

In the course of a modern government system that is increasingly democratic and in line with the growing demands of democracy in Indonesia, the Montesquieu doctrine can no longer be applied absolutely, that is, the branches of power are not limited to the legislature, executive and judiciary but are expanding to the branches of power in the field of financial supervision. from countries such as BPK and KPK in Indonesia, in addition to applying the principle of checks and balances between state institutions it is possible to influence each other. In Indonesia, for example, legislative authority also rests with the executive, namely proposing

draft laws or regional regulations, in addition to legislative authority which is the business of the legislature³.

This condition, understood by Jimly Asshiddiqie in Indonesian terms after the amendments to the 1945 Constitution (1-4) actually adheres to the concept of separation of powers in a horizontal sense where the separation of powers is carried out by applying the principle of checks and balances between constitutional institutions. equal with the aim of controlling and balancing each other. This is different when before the amendment to the 1945 Constitution where the concept adopted was the distribution of power (distribution of power or division of power), that is, people's sovereignty was considered to be reflected in the power of the highest state institution called the People's Consultative Assembly which was then distributed by the highest state institution the power of the people distributively to high state institutions.⁴

In this way, the power of the Indonesian state is then distributed into three power institutions, namely legislative power (state power which functions to form laws); executive power (state power whose function is to implement laws); and judicial power (state power whose function is to supervise the judicial function of the implementation of laws, not only by the executive power but also the legislative and judicial powers themselves

c. Legitimacy of State Power

Legitimacy as the basis for the functioning of power can vary. For example, the power of parents over their children, the source of the legitimacy of power comes from within the family. The power possessed by a community or religious figure, the source of legitimacy comes from the public's trust in the character of a person or the religion he adheres to. The power of a company leader, the source of legitimacy comes from functional relationships at work. Or political power, the source of legitimacy comes from power within a country to carry out the will of the state to its people.

Samsul Wahidin⁵ distinguishes there are 6 (six) types of power based on the source of power legitimacy, especially formally administrative as follows:

- 1) Reward power is power whose legitimacy comes from a number of positive remuneration (money, protection, career development, positive promises, etc.) given to the recipient to carry out orders or other requirements. The factor of one's submission to power is motivated by that in the hope that if you have done something you will get what was promised.
- 2) Coercive power stems from the expectation that people feel that punishment (dismissed, reprimanded, fined, corporal punishment, etc.) will be received if they do not carry out the orders of the leader. Power becomes a repressive motivation for a person's psyche to submit to the authority of the leader and do as he pleases. Otherwise coercion is expected to be dropped.
- 3) Legitimacy power (legitimate power) power that develops on the basis of and departs from internal values that arise from and is often conventional in nature that a leader has the legal right to influence his subordinates. Meanwhile, on the other hand, a person has an obligation to accept this influence because another person is determined as his leader or superior while he is a subordinate. Such legitimacy can be obtained on the basis of formal rules but can also come from power that arises due to natural forces and the power of access in mutual association which makes a person lucky to gain the legitimacy of a power.

³ B. Hestu Cipto Handoyo, *Hukum Tata Negara Indonesia* (Yogyakarta: Universitas Atma Jaya, 2009).

⁴ Jimly Asshiddiqie, *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi* (Jakarta: Konstitusi Press, 2006).

⁵ Samsul Wahidin, *Distribusi Kekuasaan Negara Indonesia* (Yogyakarta: Pustaka Pelajar, 2014).

- 4) Power control over information (control of information power) this power exists and comes from an advantage over a knowledge where others do not have. This method is used by giving or withholding information needed by other people who inevitably submit (in a limited way) to the power of the owner of the information. The owner of the information can regulate everything related to the circulation of information, based on the legitimacy of the power they have.
- 5) The power of a role model (referent power) this power appears based on the cultural understanding of people with status as leaders. Society makes the leader as a role model or a symbol of their behavior. The cultural aspects that usually arise from an understanding of religiosity are reflected in personal charisma, courage, sympathy and other qualities that are not present in most people. This makes others submit to his power.
- 6) Expert power, this power exists and is the result of long forging and emerges because of an expertise or knowledge. This advantage makes a person win a position and naturally has a position as a leader in his field of expertise. The leader can reflect power within the limits of his expertise and in a limited way people are subject to power that comes from the expertise they have because of an interest in the leader's expertise.

Unlimited power tends to be abused by power holders, therefore power must be limited so as not to cause problems in its implications with limiting signs as follows:

- 1) Legislation as a general limitation that requires all people to comply with communal agreements, especially those issued by powers within the state.
- 2) Statutes and Bylaws as a benchmark for associative life or collective life in a narrower sense.
- 3) A work agreement in a more limited sense is a standard that must be used as a basis for behavior by people who have limited legal relations in the field of work.
- 4) A special agreement made as an agreement which is a projection of matters that arise as a consequence of the implementation of certain legal relations.
- 5) The propriety that prevails in the local community as the basis for moral enforcement of legal relations that originates from decency, decency and other values that live and develop in society.⁶

State power has a source of legitimacy from the Constitution as the highest norm in a country. With state power originating from the Constitution, the state has the legitimacy to make various policies through the government as the organ that represents the state in achieving its goals. The legitimacy of state power is distinguished by:

- 1) Attributive legitimacy of power, namely power that comes from circumstances that did not exist before then becomes available. The power that arises due to the formation of power is attributively original (oorspronkelijk). The formation of power attributively causes a new power. Because of its novel nature, attributive power is usually strictly limited to normative rules that do not give rise to multiple interpretations.
- 2) Legitimacy of power that is derivative, namely power that is created because it is passed on to other parties from existing power (this delegation of power becomes derivative or afgeleid). The transfer or distribution of power is based on the motivation of effectiveness and efficiency which are the principles in administering the state. Such power can be structural in the sense from top to bottom but also functional in the sense that it is based on organizational functions as its basis.⁷

The constitution as a source of legitimacy of state power demands government performance in managing power professionally by upholding the principles of effectiveness and efficiency, especially the principle of justice which must be directed to the management of that power towards the interests of the people as the main component of state sovereignty which

⁶ Wahidin. *ibid.* p. 2-5

⁷ Wahidin. *ibid.* p. 6-7

originates from people's sovereignty within the framework of achieving state goals. Indonesia as stated in the 1945 Constitution in the opening section. The state exists for the people, therefore state power must not be implemented in the form of arbitrary actions which ultimately sacrifice the interests of the people as the owners of sovereignty in this country.

d. State Position: Concrete Forms of State Power

State positions were born as a result of the distribution of state power to state institutions including legislative, executive and judicial institutions with the source of legitimacy of power derived from the 1945 Constitution. Thus, the fact that state positions exist also explains the existence of state power. Through state offices, state authority is implemented for the communal interests of society and the state.

The position of the state, whether it is within the power of the legislative, executive and judiciary state institutions, must be understood within the framework of obedience to the provisions of laws and regulations which limit it both from the aspect of the term of office and the aspect of the substance of their authority so that the state office really functions for the implementation of governance and especially to improve services to the community so that they are not misused either for the personal interests of state office holders or their groups

2. THE POSITION OF THE DPRD: NOT WITHOUT LIMITS

Power, in this case including the DPRD position as a state position which is obtained through political legitimacy in legislative general elections by the community as the owner of the highest sovereignty is essentially limited by law (by the provisions of the laws and regulations governing it) so that the said position is not misused by those who held it. Power (state position) that is not limited by law tends to be misused, deviating from the purpose of giving this power.

The position of the state (power) which is not limited by law both from the aspect of substance (authority and authority) as well as from the aspect of time will give rise to, among other things, vandalisms of power over law, namely the destruction of the legal order both from the structural (institutional) and cultural (behavior) legal aspects by because of the domination of power over the law. Why not, structurally the vandalism of power over law is shown by the rulers who are no longer focused on law enforcement and obedience to the law. The rulers take actions that are anti-law, namely corruption, collusion and manipulation in various forms that force people to obey the law on the one hand while they ignore the law at will on the other. This means that the law is no longer obeyed as a regulator of human traffic in social and state life. The elite's vandalistic behavior towards the law triggers the community's vandalistic behavior towards the law where various anti-law attitudes by the community are caused by the attitude of the community's distrust of the authorities in obeying⁹ the law. Structurally, the

⁸ Vandalism is a habitual attitude addressed to the Vandals, in ancient Roman times, whose culture included: the cruel destruction and insult of everything that was beautiful or praiseworthy. Vandalism comes from the English word: vandalism and is related to acts of vandalism; destructive nature (destructive, destructive, and destructive). The Big Indonesian Dictionary (KBBI) defines vandalism as an act of damaging and destroying works of art and other valuables (natural beauty and so on). Webster's Dictionary defines vandalism as: willful or malicious destruction or defacement of a thing of beauty or of public or private property. Thus, vandalism is the deliberate destruction or disgrace of beautiful objects as well as objects that are public facilities or private property. Sarifuddin Sudding, *Perselingkuhan Hukum & Politik Dalam Negara Demokrasi* (Yogyakarta: Mahakarya Rangkang Offset, 2014).

⁹ Obedience to the law is very dependent on a person's level of legal awareness of the importance of law for himself and others, especially in the context of society and the state. H. C. Khelman distinguishes a person's obedience to the law in three types, namely: a). Obedience that is compliance, that is if someone obeys a rule just because he is afraid of being penalized; b). Obedience that is identifiable, that is, if a person obeys a rule simply because he is afraid that his good relationship with someone will be damaged; c). Internalization of strictness, that is, if a person obeys a rule really because he feels that the rule is in accordance with the intrinsic values he adheres to. Thus the measure of the effectiveness of the law is very dependent on the quality of public obedience to⁵the

vandalism of power over law appears in the justification of the majority of the public for various KKN¹⁰ attitudes which are seen as something that is right and normal. State officials are no longer bothered and bothered by feelings of guilt when committing corrupt behavior as a norm in general. This means that the vandalism of power over the law occurs when the law as a norm that regulates social and state behavior is violated sociologically and politically by both the people and the authorities at the same time. Therefore, state positions must be limited by law so that both state officials and the people they serve can utilize power for the real purpose of achieving the welfare and prosperity of society for the betterment of the nation and state¹¹.

Legal restrictions on power (state positions), carried out as an implementation of the principle of limiting state power in order to prevent abuse of office, is a necessity when the tenure of the heads of state institutions is limited by a certain period. Term limits are also carried out in order to ensure the process of regeneration of leadership from the previous generation to the next generation because of the mandate of the Indonesian constitution, namely the 1945 Constitution. Article 28D paragraph (3) states: "Every citizen has the right to obtain equal opportunities in government".

Bayu Dwi Anggono distinguishes legal restrictions on state positions through statutory provisions into 4 (four) models, namely:

- 1) The first model, setting the term of office through the constitution, namely the 1945 Constitution. Entering this category is the term of office of the President and Vice President as stipulated in Article 7, namely the President and Vice President hold office for five years, and after that they can be re-elected in the same position, only for one tenure times;
- 2) The second model is setting the term of office through law. The Constitutional Court and the Supreme Court enter this model. Article 4 paragraph (3) and paragraph (4) of Law 8/2011 concerning Amendments to Law 24/2003 concerning the Constitutional Court stipulates that the Chairperson and Deputy Chief Justice of the Constitutional Court are elected from and by members of the constitutional justices for a term of 2.5 years and can be re-elected into office. the same for one term of office. Meanwhile for the Supreme Court, Law 5/2004 concerning amendments to Law 14/1985 concerning the Supreme Court stipulates the term of office for the Chief, Deputy Chairperson and Junior Chair of the Supreme Court for 5 years. However, this five-year period is not absolute because according to Article 11 letter b of Law 3/2009 concerning the Second Amendment to Law 14/1985 concerning MA it is stated that the Chairman, Deputy Chairperson, Junior Chair of the Supreme Court, were honorably dismissed from their positions because they were 70 years old;
- 3) The third model, tenure arrangements are not regulated in law but in internal regulations (rules of conduct are included therein). MPR, DPR, DPD and KY fall into this category. In the MD3 Law there is no single provision that clearly and unequivocally regulates the tenure of the MPR, DPR and DPD leadership. Likewise, Law 22/2004 as amended by Law 18/2011 concerning the Judicial Commission does not stipulate the term of office of the Chairman and Deputy Chairman of the Judicial Commission. As for the term of office of the MPR leadership, it is regulated in Article 24 of MPR Regulation Number 1/2014

law. If the majority of people obey the law, it means that the law is effective, and vice versa, the law is not effective. Achmad Ali, *Mejelajahi Kajian Empiris Terhadap Hukum* (Jakarta: PT. Yasrif Watampone, 1998).

¹⁰ Corruption as a form of vandalism of power over the law carried out by the authorities because the law no longer strictly limits power as a result of weak law enforcement by law enforcers really has very serious implications, namely: first, mass impoverishment of the people and the wealth of the rulers has experienced swelling; secondly, demoralization occurs at two levels at once, namely at the structural and cultural levels; third, the sustainable effect is massive state bankruptcy which causes mass tantrums and social tantrums due to people's distrust of the law which has an impact on social disharmony and mass vandalism Sudding.Op.Cit p 181

¹¹ Sudding.*ibid.* p 182

concerning Standing Orders, namely the term of office for the MPR leadership is the same as the term of office for MPR membership (5 years). For DPR leadership, it is regulated in Article 27 of DPR Regulation No. 1/2014 concerning Standing Orders, namely the term of office for the leadership of the DPR is the same as the membership period of the DPR (5 years). For DPD leadership, Article 66 of DPD Regulation Number 1/2014 stipulates that the tenure of the DPD leadership is the same as the DPD membership period (5 years). Meanwhile, KY is regulated in KY Regulation Number 1/2010 as amended by KY Regulation Number 1/2016 concerning Procedures for Election of KY Leaders, which states that the positions of Chairman and Deputy Chairperson of KY are 2.5 years and after that they can be re-elected only for 1 term. position; And

- 4) The Fourth Model, position arrangements are not regulated in law and are also not regulated in internal regulations. Entering this fourth model category is CPC. Law No. 15/2006 does not regulate the terms of office for the chairperson and deputy chairman of the BPK, while BPK Regulation No. 1/2009 concerning Procedures for the Election of the Chairperson and Deputy Chairperson of the BPK also does not stipulate it. So far, in practice, the positions of the Chairman and Deputy Chair of the BPK are 5 years following the term of office of BPK members. Although in practice this 5 year period is not absolute because it can end sooner if you are 67 years old¹².

Criticism of the opinion of Bayu Dwi Anggono who classifies the term limits for the DPR (including the Provincial and Regency/City DPRD) falls into the third model category, namely that tenure arrangements are not regulated in law but in internal regulations through DPRD orderlies. the misplaced classification because of the limitation on the term of office of the Provincial and Regency/City DPRD is regulated through Law Number 17 of 2014 concerning the MPR, DPR, DPD, DPRD or known as the MD3 Law. Article 318 of the law in question, for example, regulates the limitation of the term of office of the Provincial DPRD, which is 5 (five) years.

Another interesting thing about the limitation of the DPRD term of 5 (five) years is an unlimited limitation as for other state positions, for example state positions that are categorized as other political positions such as President, Governor, Regent/Mayor are strictly limited by law. a maximum of 2 periods for the same position, while the DPRD is not limited to 2 (two) terms for the same position. This not only has the power of injustice before the law even though both political positions are directly elected by the people through the general election mechanism, it also explains how dominant the legislature's power is over the law. The legislative authority possessed by the DPR gives political freedom to regulate their interests free from term restrictions according to a maximum period of two terms in the same term of office. The law should provide the same limits so that in addition to creating justice for all restrictions on political positions, it also provides equal opportunities for everyone to experience the same political office in order to devote their political commitment to the interests of the nation and state. It is not surprising that every period of DPRD office there is always a new DPRD with old stock that has been patterned according to the old style which tends to be established and anti-change while the social situation. politics, culture, the economy of society tend to change very quickly and demand a responsive political attitude from the people's representatives.

We really cannot expect much from the DPR through its legislative authority to create a Law on limiting the term of office of the DPR and DPRD as equal to the limitation of other political terms, namely a maximum of 2 (two) terms in the same term due to the domination of political power. owned by the legislature over the process of forming laws, including laws governing the limitation of their terms of office as Law Number 17 of 2014 concerning the

¹² Bayu Dwi Anggono, 'Kekuasaan Negara', *Detik.Comk* <news.detik.com/kolom/3170107/bom-waktu-polemik-masa-jabatan-pimpinan-lembaga-negara> [accessed 1 August 2023].

MPR, DPR, DPD, DPRD. This phenomenon is a classic phenomenon about which is the most determinant between politics and law¹³. Law and politics should be parallel, in the sense of mutually determining or presupposing. Politics without law, will become undirected and uncontrolled. Sovereignty of the people (democracy) must be balanced by the rule of law (nomocracy), in accordance with the democratic system that we adhere to, namely constitutional democracy, namely democracy must be inspired and guided by a constitution (provisions of laws and regulations). Politics without law will produce what Sarifuddin Sudding terms as criminal democracy, namely the law has no role at all because the law has been engineered by political domination and what is left behind is democracy which is permeated by the majority of corrupt politicians. Meanwhile, law without politics is impossible because law is a product of politics, produced by political institutions (DPR and DPRD). In the process of law formation in these political institutions, the law that will be produced is very dependent on the political configuration that surrounds it. This is in line with the opinion of Mahfud MD¹⁴ who explained that a democratic political configuration will give birth to responsive laws, while an authoritarian political configuration will give birth to orthodox-conservative laws that are repressive. This means that the political configuration will greatly determine the legal product to be formed. Democratic Political Configuration Indicators: (1) Political parties and Parliament are strong, determine the direction and policies of the state; (2) executive branch (neutral government); (3) free press, without censorship and banning. Authoritarian political configuration indicators: (1) political parties and parliament are weak, under executive control; (2) executive branch (government) is interventionist; (3)) the press is flattered, threatened with censorship and banned. Indicators of the Characteristics of Responsive Law Products: (1) the production is participatory; (2) the content is aspirational; (3) the details of the contents are limited. Indicators of the Characteristics of Orthodox Law Products: (1) the production is centralistic-dominative; (2)) the content is positivist-instrumentalistic; (3) the details of the contents are open interpretative. This is also in line with the opinion of Saryono Yohanes who said that politics and law are difficult to separate, because there is no legal politics/policy in the field of law which is separate from the political process. between law and politics are mutual interaction, interconnection, and interdependence. Meanwhile¹⁵, the matter of legal restrictions on the authority of the Provincial and City Regency DPRD is normatively sufficiently stipulated in Law Number 17 of 2014 concerning the MPR, DPR, DPD, DPRD with the aim that the same authority owned is not abused.

CONCLUSION

The limitation of the DPRD's position as a state position is the essence of the limitation of state power by law, in this case the provisions of laws and regulations governing it as a manifestation of the nature of Indonesia as a state based on law (*rechts staat*) not based on power (*machts staat*) as mandated by the 1945 Constitution which is the legal basis and measure of the performance of state power and positions in all state power institutions, namely the legislature, executive and judiciary. Legal restrictions on the authority of the DPRD office through Law Number 17 of 2014 concerning the MPR, DPR, DPD, DPRD are normatively sufficient, but the limitation on the term of office of the DPRD is still considered not to reflect the principle of equality with provisions regarding other elected political terms. through the mechanism of direct elections by the people as the owners of sovereignty in this country. This is a bad portrait of the law formation process in Indonesia, where the domination of legislative power in the DPR leads to political domination of the law in terms of prioritizing political interests above the interests of equality before the law (where the term limit must be the same

¹³ Sudding.Op.Cit. p 53

¹⁴ Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Press, 2009).

¹⁵ Saryono Yohanes, *Politik Hukum ;Buku Ajar Berbasis Modul Berdasarkan Kurikulum Berbasis Kompetensi* (Kupang: Universitas Nusa Cendana, 2015).

between the DPRD and other political positions such as President, Governor , Regent/Mayor limited to a maximum of 2 (two) consecutive terms in the same position).

BIBLIOGRAPHY

- Ali, Achmad, *Mejelajahi Kajian Empiris Terhadap Hukum* (Jakarta: PT. Yasrif Watampone, 1998)
- Anggono, Bayu Dwi, 'Kekuasaan Negara', *Detik.Comk* <news.detik.com/kolom/3170107/bom-waktu-polemik-masa-jabatan-pimpinan-lembaga-negara> [accessed 1 August 2023]
- Asshiddiqie, Jimly, *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi* (Jakarta: Konstitusi Press, 2006)
- Handoyo, B. Hestu Cipto, *Hukum Tata Negara Indonesia* (Yogyakarta: Universitas Atma Jaya, 2009)
- MD, Mahfud, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Press, 2009)
- Sailan, Fakhrisya Zalili, 'Hubungan Hukum, Negara, Dan Kekuasaan', *Zalilifakhrisya.Blogspot.Com*
- Sibuea, Hotma P., *Asas Negara Hukum, Peraturan Kebijakan, & Asas-Asas Umum Pemerintahan Yang Baik* (Jakarta: Erlangga, 2010)
- Sudding, Sarifuddin, *Perselingkuhan Hukum & Politik Dalam Negara Demokrasi* (Yogyakarta: Mahakarya Rangkang Offset, 2014)
- Wahidin, Samsul, *Distribusi Kekuasaan Negara Indonesia* (Yogyakarta: Pustaka Pelajar, 2014)
- Yohanes, Saryono, *Politik Hukum ;Buku Ajar Berbasis Modul Berdasarkan Kurikulum Berbasis Kompetensi* (Kupang: Universitas Nusa Cendana, 2015)