

2 Legal Arrangement Concerning Regional Unit Price Standards Its Impact to

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Legal Arrangement Concerning Regional Unit Price Standards Its Impact to Financial and Administrative Rights of Regional People's Representative Council.

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ABSTRACT

Constitution in the government system of the Republic of Indonesia adheres the concept of *trias politica*, which is a concept stating that power is not transferred to the same person/institution, to prevent abuse of power and to guarantee human rights of citizens. The concept of *trias politica* is applied in the form of three institutions, namely executive, legislative and judicial institutions. These three institutions have different duties, rights, obligations, and responsibilities according to their authority. However, the aim of preventing abuse of power by means of power distribution is not running well and there has been an overlap of authority among the institutions. This research is the author's study of the Legal Arrangements concerning Regional Unit Price Standards upon the issuance of Presidential Regulation Number. 33 of 2020, its impact to Financial and Administrative Rights of the chairman and members of the Regional People's Representative Council. It is a normative legal research applying statutory approach, conceptual and comparative approaches. It was concluded that the placement of legislature as a quasi-executive results in the legislature shall comply with every regulation issued by the executive, this causes in an overlap of authority between the executive and the legislative institutions

Keywords: Legal, Regional Unit Price Standards, Financial and Administrative Rights, People's Representative Council.

1. Introduction

People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council who are elected through general elections. The functions and roles of people's representatives are regulated in a number of articles in the 1945 Constitution of the Republic of Indonesia (UUD 1945), including in Chapter II, Article 2 and Article 3.

Chapter VI Article 18 paragraph (1) to paragraph (7) regulates regional governance, where as a unitary state, Indonesia consists of provincial areas, and the provincial area consists of regencies and cities, each province, regency, and the city has a local government, which is regulated under the laws. Provincial, regency and city governments have Regional Representative Council (DPRD) whose members are elected through general elections.

The provisions relating to the House of Representatives (DPR) in terms of functions, rights and other provisions are regulated in Chapter VII articles 20, 20A, 21, 22 and in Chapter VII A article 22D of the 1945 Constitution, stating that the House of Representative has a legislative function, a budgetary function, and supervisory function. The House of Representatives (DPR) also has interpellation right, the right to inquiry, and the right to express an opinion including the right to ask questions, submit suggestions and opinions, and immunity right.

The constitution in the government system of the Republic of Indonesia adopts the concept of *trias politica*. Its application is implicitly regulated in the 1945 Constitution. Although it is not absolutely enforced, it has given the meaning of limiting the functions and authorities of state institutions so as not to act arbitrarily, avoiding overlapping authority, so that there is no concentration of power in one particular institution.

The division or separation of powers is also intended to guarantee the human rights of citizens. This is in line with what Lord Acton said that "*power tends to be corrupt, but absolute power corrupts absolutely*" (Humans who have power tend to abuse it, but humans who have unlimited power will certainly abuse it) (Widayati, 2015). The concept of *trias politica* is a normative concept which states that power is not delegated to the same person/institution to prevent abuse of power by the ruling party (Budiardjo, 2005).

The concept *trias politica* from Montesquieu written in the book *L'esprit des lois (The Spirit of Laws)* reviewed the rules regarding the concept of state life, namely by carrying out a separation of powers it is expected that they will be separated from each other in an equal position, so that they can control and balance each other (*checks and balances*), apart from that it is expected to limit the power, in order that there is no concentration of power in one hand which ⁸ lead to arbitrariness (Yulistyowati, Pujiastuti, & Mulyani, 2016). In the concept of *trias politica* as adopted in the Constitution of the Republic of Indonesia, it is known three institutions, namely executive, legislative and judicial institutions. These three institutions have different duties, rights, obligations, and responsibilities according to their authority.

The empirical ¹³ it is that there are many overlapping powers or conflict of norms between one statutory regulation and other laws and regulations, both vertically and horizontally. For example, there is an overlap with respect to rights, obligations, and duties, namely Law ¹² number 23 of 2014 concerning Regional Government (Law 23 of 2014) Article 1 number 4 which places the Regional People's Representative Council (DPRD) as a representative institution. The people of the region also have the position of being an element of regional government administration which is essentially an executive function. Article 95 paragraph (1) and paragraph (2) also place the Regional People's Representative Council (DPRD) as an element of Government Administrators and members of Provincial DPRD as Provincial Officials. In fact it is obvious that in the 1945 Constitution and statutory regulations concerning the position of Provincial DPRD and Regency / Municipal DPRD are to carry out their duties and roles as legislatures, namely the function of legislation (rule maker), budgeting (budget maker), controlling (supervisor).

The description above shows that Law 23 of 2014 on Regional Government has placed the function of DPRD to be quasi (such as) the function of executive is not in accordance with the substance *trias politica* adopted in the 1945 Constitution. Whereas DPRD members should carry out their legislative functions, not regional administrators or regional officials that are executive duties.

One of the impacts of placing DPRD as quasi-executive will have the consequence that if there is a regulation/policy relating to state administrators or regional officials in their function as executive, then said regulation/policy will bind all state administrators/regional officials, including the Provincial DPRD and/or members of DPRD at Regency/Municipal level, or it can be stated that Provincial DPRD and/or Regency/Municipal DPRD members are obliged to comply with regulations/policies drafted by the executive body aimed at state officials.

As an illustration of the discussion, in the context of running the government as an effort to accelerate the realization of public welfare, it is necessary to have regulations concerning income, expenditure ¹⁴ financing. In this regard, the President has issued Presidential Regulation No. 33/2020 (Presidential Decree No. 33/2020) concerning Regional Unit Price Standards, as an implementation of Article 51 of Government Regulation No. 12/2019 concerning Regional Financial Management. Presidential Decree No. 33 of 2020 constitutes the basis and provides guidelines in the preparation of standard unit prices for expenditures in each region, where in the case of regional financial management, the provisions of costs shall refer to regional unit price standards which include: cost unit of honorarium; cost unit of domestic official travel; cost unit of meeting inside and outside the office; cost unit of procurement of official vehicles; and cost unit of maintenance.

The determination of the cost unit price as regulated in Presidential Decree No. 33/2020 as the regional unit price standard is used as the basis for planning and implementing regional revenue and expenditure budgets in the framework of implementing the principle efficiency, effectiveness, appropriateness and fairness.

The issuance of this Presidential Decree, as a reference in budgeting and implementing the local Budget has a direct impact on state administrators, both the State Civil Apparatus (ASN), including the members of DPRD, since the exact nominal amount has been set for each expense incurred as stipulated in Presidential Decree No. 33 of 2020, as stipulated in the appendix constitutes an integral part of the Presidential Decree.

Based on the description above, the authors are interested in conducting a study on the validity of Presidential Decree Number 33 of 2020 to Regional People's Representative Council (DPRD) both in the Provincial as well as in the Regency/City Level and how it intersects with Government Regulation Number 18 of 2017 concerning Administrative Financial Rights of Chairman and Members of the Regional People's Representative Council.

The problem formulation which can be taken from the description of facts occurred are as follows:

1. What are the legal arrangements of Administrative Financial Rights of the Chairman and Members of the Regional People's Representative Council?
2. Is there any regulatory conflict regarding the administrative financial rights of DPRD members upon the issuance of Presidential Regulation Number 33 of 2020 Concerning Regional Unit Price Standards?

2. Method Research

This type of legal research uses objects in the form of legal norms carried out through the process of finding legal rules, legal principles, and legal doctrines in order to answer legal issues being faced (Marzuki, 2008). It is a normative legal research (*normative law research*), namely legal research examining written law from various aspects, including aspects of theory and comparison. This study applies a statutory regulatory approach (*statute approach*), a comparative approach (*comparative approach*), and the conceptual approach (*conceptual approach*) (Marzuki, 2008). Legal materials used in this research can be primary legal materials, namely statutory regulations, secondary legal materials derived from literature in the form of books or results of research. Legal materials are collected through library research, and are used to study the existing problems. The research is written by applying descriptive analytical methods, namely research intended to illustrate, elaborate and describe a state of an object or event as well as to draw a conclusion related to the object of research, namely with regard to the issuance of Presidential Regulation Number 33 of 2020 concerning Regional Unit Price Standards and its effect on Administrative Financial Rights of the Chairman and Members of the Regional People's Representative Council as stipulated in Government Regulation Number 18 of 2017 concerning Administrative Financial Rights of the Chairman and Members of the Regional People's Representative Council.

3. Results and Discussion

3.1. Results

- a. Legal Arrangements of Administrative Financial Rights of the Chairman and Members of the Regional People's Representative Council

One of the powers of the President as head of a state as well as head of government is the authority to enact Government Regulations to implement laws. The content of the Government Regulations (PP) is the material for carrying out the law properly. Article 5 paragraph (2) of the 1945 Constitution reads: "*The President enacts a Government Regulation to carry out the Law properly.*" The drafters of the 1945 Constitution did not explain in detail what is meant by the phrase "as it should be or accordingly", but it can be understood as a desire in order that that the operationalization as referred to in the Government Regulations may run as expected (Yasin, 2017).

With regard to the rights of the People's Representative Council Members both in the Provincial as well as Regency/City Level as an element of government administration as stated in the statutory regulations, they have several rights that have been regulated in a limited manner. 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 states that members of the MPR, DPR, DPRD both in the Provincial, Regency and City level have financial and administrative rights including the right to allowances of which amount shall be adapted to regional capabilities.

¹⁰ In addition to Law Number 17 of 2014 as described above, financial and administrative rights are also regulated in Law Number 23 of 2014 concerning Regional Government, considering that DPRD is a regional representative institution having its position as an element of regional government administration and members of DPRD are as local officials. It is expressly stated that the members of the Provincial DPRD, Regency/City DPRD have the financial and administrative right where the management of financial rights is carried out by the secretariat of the Provincial and Regency/City DPRD in accordance with the provisions in the Government Regulation.

Whereas, the management regarding the financial and administrative rights of DPRD has been regulated in a law which then regarding the details concerning their authorities are regulated in the form of Government Regulation. As an implementation of the regulation of financial and administrative rights, the Government has promulgated Government Regulation Number 18 of 2017 concerning Financial and Administrative Rights for the Chairman and Members of the Regional People's Representative Council. It is explicitly stated in this Government Regulation that DPRD is the Administrator of the Regional Government and members of the DPRD as the Regional Officials.

Article 2 of the Government Regulation Number 18 of 2017 regulates that the income of DPRD chairman and members to be borne by the Regional Budget (APBD) which includes: 1) fee of representation; 2) family allowance; 3) rice allowance; 4) money of package; 5) official allowance; 6) fittings allowance; and 7) other fittings allowance. and allowances which include: 1) Intensive communication allowance; and 2) recess allowances.

Regarding allowances, Article 20 limits the provisions of other supporting expenditures to support the smooth functioning, duties and powers of DPRD.⁶

With regard to state administrators Article 1 point 1 of Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism (Law 28/1999) states that "State Administrators are State Officials who carry out executive, legislative, or judicial functions and other officials whose main functions and tasks are related to state administration in accordance with the provisions of the prevailing laws and regulations. The affairs carried out by the state are not only intended as a government that only carries out executive duties, but also includes other duties including the legislature and the judiciary (Kusnardi, Muhammad; Ibrahim, 1983).

Placing state officials having legislative functions (DPRD) and state officials having judicial functions (Judges) as state administrators causes the two institutions to comply with every regulation issued by the executive institution both at the central and regional levels. One of them is the regulation of financial and administrative rights for the Chairman of the People's Representatives Council and its members, because it has been regulated under the Law No. 23 of 2014 following the hierarchy of regulations under it, namely in the form of Governor regulations or Regent regulations. Whereas, the regulations regarding financial and administrative rights of the Chairman of the People's Representatives Council and their members (legislative institutions) both at the central and regional levels are determined by the executive institution, in this case the government, through government regulations or regulations under the Governor or Regent Regulation determining the amount of financial and administrative rights for the leadership of the People's Representative Council and its members.

The author observes that there is powerlessness in the legislature, especially with regard to the regulation of financial and administrative rights for the Chairman of the People's Representatives Council and their members because they have placed the legislative function, in this case the DPRD into a quasi (like) executive, namely their position as government administrator and its members as government officials.⁹

Whereas, the legal regulations regarding financial and administrative rights for the Chairman of the People's Representative and their members have actually been regulated in the Law Number 17 of 2014 concerning the People's Consultative Assembly, People's Representatives Council, Regional People's Representatives, and the Regional People's Representative Council. This can be seen in Article 10, Article 59, Article 226, and Article 372. However, Article 390 of this Law allows for financial rights as it is expressly stated in paragraph (2) that with regard the financial and administrative rights of the chairman and members of DPRD including Regency/Municipal DPRD as referred to in paragraph (1) shall be regulated by a Government Regulation.

Based on the description above, it is obvious that the financial and administrative rights of the Regional People's Representative Council Members have been fully regulated in Government Regulation No. 18 of 2017,

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therefore, DPRD as the state administrator and the members of the Regional People's Representative Council as the state official shall be subject to and adopt the regulations drafted by the executive institution. If it is reviewed based on *Stufenbau Theory* of Hans Kelsen that a norm is tiered and layered to form a hierarchical order where the lower laws are derived from and based on higher norms to a basic norm (*grundnorm*) (Syamsuddin, 2011), Government Regulation Number 18 of 2017 concerning Financial and Administrative Rights for Chairman and Members of the Regional People's Representative Council, hierarchically, is derived from Law No. 23 of 2014 in particular Article 124 paragraph (2), Article 178 paragraph (2) and Article 299 paragraph (2). Financial and administrative rights arrangements of the members of the Regional People's Representative Council shall comply with and be based on Government Regulation No. 18 of 2017 because it is the implementing rule for Law No. 23 of 2014

The discussion of the governmental system will be closely related to the distribution of power and the relationship amongst State institutions exercising the state powers. The Concept of *trias politica* offers a concept regarding state administration by separating powers, namely legislative power, executive power and judicial power as an independent power of each other in equal positions, in order that they can control and balance each other (*checks and balances*), apart from the expectation to limit power so that there is no concentration of power in one hand which will lead to arbitrariness (Yulistyowati et al., 1945). The concept of *trias politica* in the government system in Indonesia does not apply absolutely, as it adopts a government with a presidential system in Indonesia where the president actually has more dominant power.

However, seen from the concept perspective of *trias politica* as stated Montesque, the Arrangement of Financial and Administrative Rights of the Chairman and Members of the Regional People's Representative Council which is a legislative institution is not appropriate if the regulatory legal norms determined by the executive in the form of Government Regulations, Governor Regulations or Regent Regulations, for this indicates that there has been an overlap of authority amongst one institution and the other, and they are not in accordance with the concept of separation/ distribution of power.

b. Legal Arrangement concerning Regional Unit Price Standards Pursuant to the Presidential Regulation Number 33 of 2020

As an effort to achieve the goals of the state as stated in paragraph IV of the Preamble of the 1945 Constitution, a state government is formed which carries out government functions in various fields in which the President has the power as state administrator. The state financial management system shall comply in the stipulated basic rules. The 1945 Constitution Chapter VIII concerning Finance, among others, state that the state revenue and expenditure budget is annually enacted under the law. The President as the Head of Government holds the power to manage the state finances as part of the governmental power.

With regard to regional financial management, the President, in this case the central government, has the authority to supervise, monitor and evaluate the use of Revenue Sharing Funds (DBH), General Allocation Funds (DAU), and Special Allocation Funds (DAK) which are regulated in the Government Regulation. For this purpose, a Government Regulation Number 12 of 2019 (PP No.12 of 2019) concerning Regional Financial Management has been issued. The source of authority for the issuance of Government Regulation No.12 of 2019 is the delegation of authority by means of attribution of Law No. 23 of 2014, particularly Articles 283 and Article 330. This Government Regulation includes arrangements regarding planning, budgeting, implementation, administration and accountability for regional finances.

One of which is regulated in the Government Regulation No.12 of 2019 concerning regional expenditure which is used to fund the implementation of government affairs under the authority of the regions. Regional expenditure shall be guided by regional unit price standards, analysis of expenditure standards, and/or technical standards in accordance with statutory provisions. The regional unit price standard is the unit price of goods and services determined by considering the regional price level. The determination of the regional unit price is carried out by taking into account the regional price level in effect in an area of which authority is regulated under the Presidential Regulation analysis of expenditure standards, unit price standards and/or technical standards are used as the basis for the preparation of work plans and budgets in drafting Regional Regulations concerning Regional Budget (APBD).

Article 51 paragraph (3) of the Government Regulation No.12 of 2019 concerning regional financial management delegates the authority to set regional price standards in the form of Presidential Regulation. Then, in February 2020, the President has issued Presidential Regulation Number 33 of 2020 concerning

Regional Unit Price Standards which regulates the value of: 1) cost unit of honorarium; 2) cost unit of domestic official travel; 3) cost unit of meeting inside and outside the office; 4) cost unit of procurement of official vehicles; and 5) cost unit maintenance.

The nominal/standard value of the cost unit has been clearly stated in appendix 1 and appendix 2 of the Presidential Decree No. 33 of 2020

The enforcement of Presidential Decree No. 33/2020 has a significant impact on State Civil Apparatus, State Administrators and State Officials since the value of financing received by state administrators must be adjusted to what has been stipulated in the Presidential Regulation. This situation is currently causing polemics amongst state officials, including the DPRD because the nominal amount of funds received is based on Presidential Decree No. 33 of 2020, as it turns out that the amount is smaller than the provisions of the legislation previously governing it.

As an illustration, the difference in standard arrangement for official travel costs within the Provincial Government of Bali as regulated in the Governor Regulation of Bali Number 108 of 2018 concerning Amendments to Governor Regulation Number 18 of 2018 concerning Service Travel within the Provincial Government of Bali.

Table 1.

Length Illustration Matrix of Comparison of Daily Cost Units, Lodging and Transportation for Business Trips

No.1.	Description	PERGUB BALI NO.108/2018	PRES. REG. NO. 33/2020	Note
1	Cost Unit for the daily fee and accommodation for official trips of Governor/ Regional Head /Chairman of DPRD/Echelon 1 officials: Outside the Region/Outside the City			There is a decrease in lodging costs and a decrease in the amount of daily fees received by echelon 1 officials
	Lodging cost	Rp. 5,000,000.00	Rp. 4,890,000.00	
	Daily fees	Rp. 3,800,000.00	Rp. 480,000.00	
	In the Country/Domestic			
	Lodging cost	Rp. 750,000.00	Rp. 4,890,000.00	
	Daily fees	Rp. 2,500,000.00	Rp. 190,000.00	
	Chairman of DPRD Outside the Region/Outside the City			
	Lodging cost	Rp. 5,000,000.00	Rp. 4,890,000.00	
	Daily fees	Rp. 3,800,000.00	Rp. 480,000.00	
2	In the Country/Domestic			There is a decrease in lodging costs and a decrease in the amount of daily fees received by echelon 2 officials
	Lodging cost	Rp. 750,000.00	Rp. 1,500,000.00	
	Daily fees	Rp. 2,500,000.00	Rp. 190,000.00	
	DPRD members/echelon 2 officials Outside the Region/Outside the City			
	Lodging cost	Rp. 1,500,000.00	Rp. 1,946,000.00	
	Daily fees	Rp. 3,000,000.00	Rp. 480,000.00	
	In the Country/Domestic			

		7		
	Lodging cost	Rp. 600,000.00	Rp. 1,946,000.00	
	Daily fees	Rp. 1,800,000.00	Rp. 190,000.00	

Based on the comparison matrix above, it is known that the daily fees received by state administrators after the issuance of the Presidential Decree No. 33 of 2020 is significantly reduced. This situation caused a polemic because the financial and administrative rights for DPRD, especially regarding travel costs, honorarium and others must be adjusted to this Presidential Regulation.

c. The enactment of Presidential Regulation No. 33 of 2020 for Members of the Regional People's Representative Council and its intersections with Government Regulation No. 18 of 2017

There has been an overlap of authority between the executive and legislative bodies, because it has placed the legislature as a quasi-executive. Law Number 23 of 2014 concerning Regional Government, DPRD as a people's representative institution in the regions also has a position as an element of regional government administration, and its members are regional officials.

Meanwhile, the 1945 Constitution and statutory regulations concerning the position of Provincial DPRD and Regency/Municipal DPRD expressly state that their duties are to carry out the role of legislative, namely the legislative function, the budgeting function and the controlling function. The author is of the opinion that placing the DPRD as a quasi-executive is against the 1945 Constitution, because DPRD members are legislators, not regional administrators or regional officials.

The legal consequence of the position of both Provincial and Regency DPRD as quasi-executives is that when regulations relating to governance are issued DPRD must comply with and be bound by regulations drafted by the executive body. Likewise, the enactment of Presidential Regulation No. 33/2020 concerning Regional Unit Price Standards, so inevitably DPRD as state administrators are bound and subject to the enactment of this provision.

The author is of the opinion that there is no conflict of norms between Presidential Regulation Number 33 of 2020 concerning Regional Unit Price Standards and Government Regulation Number 18 of 2017 concerning Financial and Administrative Rights of the Chairman and Members of the Regional People's Representative Council but on the contrary, these regulations can complement each other as a basis for the preparation of Regional Budget (APBD).

3.2. Discussion

The legal arrangements governing the administrative and financial rights of the Chairman and Members of the Regional People's Representative Council (DPRD) in Indonesia are outlined in Law Number 17 of 2014 and detailed in Government Regulation Number 18 of 2017. However, concerns have arisen over the quasi-executive position of DPRD, potentially leading to an overlap of authority between the executive and legislative branches. This issue has been highlighted in previous studies, such as Yasin (2017) and Kusnardi and Ibrahim (1983). Furthermore, the issuance of Presidential Regulation Number 33 of 2020, which establishes Regional Unit Price Standards, has raised debates due to its impact on allowances for state officials. The practical implications of this regulation have been observed, as illustrated by the comparison with the Governor Regulation of Bali Number 108 of 2018. Despite potential conflicts, these regulations can still complement each other in the preparation of the Regional Budget (APBD), but further discussions and assessments are imperative to ensure a balanced governance system (Syamsuddin, 2011).

4. Conclusion

Arrangements regarding the financial and administrative rights of the Regional People's Representative Council (DPRD) have been stipulated in the Law on Regional Government, as well as the Law on the People's Consultative Assembly (MPR), the Regional Representative Council (DPD), and the DPRD. The implementation is governed by Government Regulation on the financial and administrative rights of the leaders and members of the regional representative council. Furthermore, it is further detailed in Presidential Regulation No. 33 of 2020 concerning Regional Unit Price Standards. However, placing the legislative institution as quasi-executive, as a

state organizer, has the consequence that any regulation issued by the executive institution will bind the legislative institution to comply with the provisions/regulations set by the executive.

The regulation regarding the Regional Unit Price Standard has implications for the Legislative Institution to adjust its financial rights and administrative matters, so that the Regional Unit Price Standard is followed by the Regional People's Representative Council (DPRD). It can be stated that the DPRD, as a state organizer, must adhere to this Presidential Regulation in terms of financial and administrative rights for its leaders and members, related to travel expenses, honorariums, and others. The regulation on the financial and administrative rights of DPRD members, as stipulated in Presidential Regulation Number 33 of 2020 regarding the Regional Unit Price Standard, normatively based on the theory of separation of powers, essentially does not bind the financial and administrative rights of the DPRD as a Legislative institution. Therefore, there will be no conflict of laws and regulations.

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